

KAUA'I PLANNING COMMISSION
REGULAR MEETING
January 26, 2016

The regular meeting of the Planning Commission of the County of Kaua'i was called to order by Chair Mahoney at 9:03 a.m., at the Līhu'e Civic Center, Mo'ikeha Building, in meeting room 2A-2B. The following Commissioners were present:

Chair Sean Mahoney
Vice Chair Louis Abrams
Mr. Wayne Katayama
Mr. Kimo Keawe
Mr. Roy Ho

The following staff members were present: Planning Department – Michael Dahilig, Leslie Takasaki, Kaaina Hull, Jody Galinato; Deputy County Attorney Jodi Higuchi-Sayegusa, Office of Boards and Commissions – Administrator Jay Furfaro, Commission Support Clerk Darcie Agaran

Discussion of the meeting, in effect, ensued:

CALL TO ORDER

Chair Mahoney called the meeting to order at 9:03 a.m.

ROLL CALL

Planning Director Michael Dahilig: Commissioner Katayama?

Mr. Katayama: Here.

Mr. Dahilig: Vice Chair Abrams?

Mr. Abrams: Here.

Mr. Dahilig: Commissioner Keawe?

Mr. Keawe: Here.

Mr. Dahilig: Commissioner Ho?

Mr. Ho: Here.

Mr. Dahilig: Chair Mahoney?

Chair Mahoney: Here.

Mr. Dahilig: Mr. Chair, you have five (5) members present this morning.

APPROVAL OF THE AGENDA

Mr. Dahilig: We are on the Approval of the Agenda, Mr. Chair. The Department would recommend a number of changes to the agenda order this morning. Is to...after public testimony, take Item L.1. after Hearings and Public, and then afterwards take discussion and/or potential action on Item 2.a.1. relating to North Shore Urgent Care. Then at the 11 o'clock hour, notwithstanding the progress of those two (2) agenda items, to take Item F.4.a. up for discussion, and then take Item H.1., the Executive Session, during lunch. And then request that Item I.2.a., the Six-Year Capital Improvement Report Plan, be deferred until the second meeting in February. So just to reiterate again, Mr. Chair, it would be taking, after Hearings and Public Comment, Item L.1.a., the Somers' status report first. And then taking potential action on Item F.2.a.1. relating to the North Shore Urgent Care second. Notwithstanding those two (2) items, taking discussion and/or potential action on Item F.4.a., zoning amendment, at the 11 o'clock hour with Executive Session at lunch, and request for deferral on Item I.2.a. until the second meeting in February.

Chair Mahoney: Chair will entertain a motion for approval of agenda changes.

Mr. Keawe: Move to approve agenda changes.

Mr. Abrams: Second.

Chair Mahoney: It's been moved and seconded to change the agenda order per the Director's verbal presentation. Any discussion? Hearing none. All in favor? (Unanimous voice vote) Opposed? (None) Motion carries 5:0.

MINUTES of the meeting(s) of the Planning Commission

Mr. Dahilig: Thank you, Mr. Chair. We are now on Item D, Minutes of the Meetings of the Planning Commission. We have no meeting minutes set for approval by the Commission this morning.

RECEIPT OF ITEMS FOR THE RECORD

Mr. Dahilig: We are on Item E, Receipt of Items for the Record. We do have two (2) additional supplements that have been distributed to the Planning Commission as a packet. It should look like this. And these items should be received for the record as well.

Chair Mahoney: Chair will entertain a motion to receive.

Mr. Abrams: Move to receive items for the record; New Agency Hearing for North Shore Urgent Care Clinic and County of Kaua'i, Planning Department, Zoning Amendment ZA-2016-4.

Mr. Keawe: Second.

Chair Mahoney: It's been moved and seconded. Any discussion? Hearing none. All in favor? (Unanimous voice vote) Motion carries 5:0.

HEARINGS AND PUBLIC COMMENT

Continued Agency Hearing (NONE)

Mr. Dahilig: Thank you, Mr. Chair. We are now on Item F. This is Hearings and Public Comment. Under Item F.1., Continued Agency Hearing, we have none set for discussion this morning.

New Agency Hearing

Class IV Zoning Permit Z-IV-2016-11 and Use Permit U-2016-9 to construct and operate a medical clinic facility and four (4) residential units on a parcel located in Princeville, situated along the makai side of Kūhiō Highway and approx. 250 ft. east of its intersection with Hanalei Plantation Road, further identified as Tax Map Key 5-4-024:020 and affecting a portion of a parcel containing 19.204 acres = North Shore Urgent Care Clinic, LLC. [Director's Report received 1/26/16.]

Mr. Dahilig: Item F.2.a., New Agency Hearings, Class IV Zoning Permit Z-IV-2016-11 and Use Permit U-2016-9. This is to construct and operate a medical clinic facility and four (4) residential units on a parcel located in Princeville, situated along the makai side of Kūhiō Highway and approximately 250 feet east of the intersection with Hanalei Plantation Road, further identified as Tax Map Key 5-4-024:020 and affecting a portion of a parcel containing 19.204 acres. The applicant is North Shore Urgent Care Clinic, LLC. There is a Supplemental No. 1 to the Director's Report pertaining to this matter.

Mr. Chair, the Department would recommend opening the agency hearing at this time as we have a number of individuals that have signed up to testify.

First is Alan Fayé, followed by Mary Paterson, followed by Felicia Cowden. Alan Fayé.

Chair Mahoney: Please state your name for the record.

Alan Fayé: Alan Fayé from west side and north shore. Mr. Chairman and Commissioners, Aloha Kakahiaka. I don't show up very often, but in this occasion, this is very important to me and to a lot of doctors and friends of the north shore. If you all read my written testimony...has anybody read this? If not, I can kind of paraphrase it, okay? Want me to do that?

Chair Mahoney: You have three (3) minutes.

Mr. Fayé: Okay. Basically, we, residents of the Kaua'i North Shore, feel that we currently have adequate clinical service to cover all of our needs between Kīlauea and Hā'ena. If we have emergency care, which means going to the E.R., we have to either go to Mahelona or Wilcox by ambulance or somebody might drive us there. Class IV Zoning Permit to construct and operate a medical clinic facility, they're calling it an emergency clinic, on a parcel located in Princeville. We local residents, including a lot of doctors, would prefer to have a Princeville-located emergency room service; not just a clinic. I realize that we're talking about another hospital on the north shore, but it's not a big hospital; it's just a mini hospital. It's more like triage and it's more like when Monty Downs has some surfer that broke his neck or his...something other and needed an x-ray immediately, so it would be a facility that would cover a lot of the emergency needs for everyone from...probably from...all the way from Moloa'a to Hā'ena. I think with our population of the north shore, we have many, many visitors and they get hurt, too. They fall off the Queen's Bathtub and whatnot. If you have 2 o'clock in the morning emergency, that E.R. has to be on-call. I know E.R. doctors that have been on-call. They may be sound asleep, but 2 o'clock in the morning they get the call. So what I understand is that there is quite a lot of work to be done to provide what's called a needs assessment, which means you have to really prove that you need this facility in order to have authorization to build a real emergency room. Let's call it a light-weight emergency room. The good part about this is that our representative, Derek Kawakami...

Mr. Dahilig: Three (3) minutes, Mr. Chair.

Mr. Fayé: Introduced a bill to add a second...

Chair Mahoney: Excuse me. Could you wrap up your testimony, please?

Mr. Fayé: Okay.

Chair Mahoney: Thank you.

Mr. Fayé: Wrap up is that we are now going to have a second ambulance in Princeville, and that fits into the ability to handle an emergency. Any questions?

Chair Mahoney: Thank you for your testimony. Appreciate it.

Mr. Dahilig: Mary Paterson, followed by Felicia Cowden, followed by David Pak. Mary Paterson.

Chair Mahoney: State your name for the record, please.

Mary Paterson: Yes. My name is Mary Paterson. I'm from Princeville. I understand there is a very distinct conflict between some of our community members, the medical staff, and the clinics, which feel, I believe, threatened by this new urgent care facility. But I feel, as one of the residents who may need an urgent care facility after hours or on weekends when our doctors are

not available, that this is a very important facility that would enhance many of the lives and possibly save lives on the north shore. Mr. Fayé has very succinctly said that we do have a lot of accidents, a lot of drownings or potential drownings, and right now, we only have one (1) ambulance on the north shore. Our firemen and first responders are not trained to be able to diagnose and clear people, so the ambulance, if it's called to a site, has to stay and has to go to that site whether there's three (3) or four (4) other emergencies at the same time, so we are very underserved on the north shore. I cannot see that there is any threat for them taking away business because this group of doctors are E.R. doctors. They are able to diagnose, stabilize, and treat people and send them on to Wilcox if necessary, but they can save lives. A lot of statistics show that many accidents and illnesses and just the general earaches and urinary tract infections and all things happen at night and after hours. I'm hopeful that the medical staff will see that by having x-ray machines, which this clinic will have, and it will also have bloodwork, that they will be able to send their own patients, me being one because I have...my primary care physician is on the north shore; I would not change that. I'm not going to go to urgent care unless it's an urgent care thing that I can't get to a doctor in time and I don't wish to drive to Wilcox or be taken by ambulance, if at all possible. That puts heavy resource and burden on the County. So I feel that everybody can work together and there is room for this. I think it would benefit our community hugely and I'm very much in support of it. But I also want to make sure that I listen to the concerns of the doctors as well because I believe that they are the people that have the most concerns and I would like to hear their points of view as well. Thank you.

Chair Mahoney: Thank you.

Mr. Dahilig: Felicia Cowden, followed by David Pak, followed by Aukai Lee.

Felicia Cowden: I'm Felicia Cowden. I was hoping...often you guys will have a demonstration at the beginning of exactly what this is that we're looking at. I have just seen what I have read. I have concerns. My understanding is these residential units are going to be there for people coming from somewhere else that they would be like rotating emergency room doctors in training. Having personally been at the effect of a bad prescription that has impacted me permanently, I worry if there is a nurse that's really running this organization, that's what I understand it to be, with trainee doctors that don't have any kind of connection to the community that mistakes can happen, and so that concerns me. Do we need x-rays up there, things like that? Yes. I mean, that would be great to have if that is, in fact, truly...if they really truly have this emergency room capability; I'm not sure if that's the case. Having done business on the north shore for thirty (30) years, been in that environment, doctors come and go. It doesn't seem to be a very easy business to be in, so I would want to hope that we're being cautious when we make a choice that we're not undermining more stable, strong, enduring doctors that live here. So, again, probably my biggest concern is rotating in and out. It is really, really a wonderful thing when we have a long continuous relationship with our physicians. So not informed enough, came here for that information, but those are my concerns. Thank you.

Chair Mahoney: Thank you.

Mr. Dahilig: David Pak, followed by Aukai Lee, followed by Art Brownstein, MD.

Chair Mahoney: Could you state your name for the record, please?

Dr. David Pak: Hi. My name is Dr. David Pak. I'm the new primary care physician at Princeville. I think I can testify pretty much what's going on on the north shore because I'm the newest guy in town and had to deal with some of the issues that we're talking about. I just want to make very succinct distinction, and I appreciate the people on the north shore because I'm part of the community, I live there, we are part of the whole dynamics that's involved with the charities and everything there. The problem I have with this whole situation is that there is an intended deceit that really bothers me. First of all, this is an urgent care clinic. I had an extensive discussion with Dr. Kimball, who's sitting behind me, who's trying to push this, and originally, it was supposed to be an emergency room, a freestanding emergency room, which I was 100%...and he knows, he's right there...in support of. Okay, because I do believe that if there's a freestanding emergency room, I think that would be a great benefit. But what he's proposing is urgent care; nothing different from what I have, nothing different from what Kīlauea clinics have. You have to define the definition of "urgent care" and "emergency care", okay? Totally different. By definition, urgent care...if you have an ambulance that has a...let's say a drowning patient, you can point blank ask them, the ambulance cannot stop at that urgent care. By law, they have to go to the emergency room, so that does no benefit. Everything that they are talking about, emergency, saving lives, that's all mask and mirrors. It's not going to happen. By law, if an ambulance comes to a scene, they cannot stop at that urgent care. They have to go to Mahelona or Wilcox; by definition. I don't understand where this whole thing is that, okay, we need this. If it's a freestanding emergency room, I agree 100%. What they are doing is in direct competition to what we are offering; no different. It's a clinic with off hours. Number two is that if you look at the dynamics, if you look at the numbers, I've been there since June. Okay, we average about 1.5 urgent cares per day, walk-ins. Kīlauea, you can ask them. They can testify on their own. There's a reason why, if you look at all of the Hawaiian Islands, okay, there's not one (1) single 24-hour urgent care clinic; not one (1). There's a reason why. The finances don't make any sense, okay? By definition, it doesn't make any sense. If you look at the number of patients that need to be seen between the hours of 7:00 p.m. to 6:00 a.m., the only ones that are really needed are emergency. Urgent care is nothing more than hours beyond what we see in clinic; by definition. So this whole thing about 24-hour urgent care is all misleading. The third thing that's concerning to me is all of the physicians here, we live here, we are invested here...

Mr. Dahilig: Three (3) minutes, Mr. Chair.

Dr. Pak: Okay.

Chair Mahoney: Could you wrap up your testimony, please?

Dr. Pak: What they are thinking about is putting in a clinic, have a nurse practitioner or mid-level running it, and then they are going to have rotating people training. That's why they need this thing up and...for residential purposes. The fourth thing I wanted to say is...

Chair Mahoney: Could you wrap it up? You used up your three (3) minutes and we have a lot of people.

Dr. Pak: Okay. Well competition is fine, but I don't understand why they can't do the same thing that I did. I didn't come for any special exemptions or whatever. I opened up the clinic. I did what I needed to do. I don't understand why they can't do the same thing. I'm done. Thank you.

Chair Mahoney: Well thank you for your testimony.

Dr. Pak: Any questions?

Chair Mahoney: No, thank you.

Mr. Dahilig: Aukai Lee; followed by Art Brownstein, MD; followed by James Winkler. Aukai Lee.

Chair Mahoney: Could you state your name for the record, please?

Aukai Lee: Good morning, Commission. My name is Aukai Lee. I'm here today as a...just a private citizen. I've been a fireman on the north shore for over twenty (20) years. I've been a resident of thirty-five (35). I know you guys have a difficult decision in front of you, but I just wanted to speak on a couple items you may not be aware of. The problem that we are having on the north shore...the problem that we are having is that the transient population of tourist, because it's so large, they don't want to drive in to the E.R., so this isn't just about the north shore. Ambulance leaves the north shore for something like a sprained ankle. People don't want to drive, then we have to bring an ambulance out from Kapa'a. Then that ambulance is gone at Kapa'a. While they're out, on the way back, the ambulance from the north shore responds to a call in Kapa'a. Now, we have a third call, which is common on the north shore, waiting on the ambulance to come from Līhu'e. This isn't like some false scenario. The problem that I have been having over the years...and we cannot get the State to up their ambulance service; it's not going to happen. This is actually a County function where we are looking at a solution to a problem. And yes, it is true, the ambulance cannot take people directly to the urgent care clinic. But I can't even begin to tell you how many times people do not want to drive, they do not want to be inconvenienced, and they go, take me in by ambulance. And they don't want to go to the clinic, they want to go to an emergency room, they want to see a doctor. So you tell them it's urgent care, you can walk-in, get an x-ray, you can be seen by a doctor that's qualified, and they will go on their own. One of the first things that we do is we screen the people, even though legally we cannot tell them to not go. We ask them, look, do you have another way to go in? Probably more than half of the calls that we get, its stomach aches, its sore ankle, you know. Just the whole thing with the Nā Pali Coast. All of the people that are being pulled off the trail, which is as many as three (3) to four (4) people a week, we have to transport them in by ambulance. And guess what? They are not taking them to Mahelona. They don't want us to take them to Mahelona. They take somebody to Mahelona or we send people there, the E.R. doctor there decides that person cannot be released. They have to take another ambulance out of service, drive up to the Mahelona E.R., and then transport them to Wilcox, so we rarely send anybody to Mahelona. And yes, for sure, people will go into the local clinics, they can get stitches, but I can't even tell you how many times in the middle of the night we have some older person that doesn't want to drive with poor vision, and they just go in because they've stubbed

their toe. So just having someplace, you know, let alone open 24 hours, they can just go in and get evaluated, maybe get an x-ray, is going to be huge because it's not just the north shore. Every time that ambulance goes because of the logistics that we have with traffic and the distance to the E.R., we all know in the emergency services that this has become a huge problem. We cannot force the State into taking proper action. They just look at us as being a rural community and we don't need another ambulance. There's nothing on the books...there's nothing on the books...

Mr. Dahilig: Three (3) minutes, Mr. Chair.

Mr. Lee: For them to provide a...I'll just finish up. To provide another ambulance for us, so every year our call rate, and Dr. Kimball can show you where it's at, it's getting to the breaking point. So yes, this is an emergency room, but nonetheless, if you look and see...

Chair Mahoney: Wrap up your testimony. Your three (3) minutes is over.

Mr. Lee: You will see that the potential is there for that to change and it will be a big problem solver for the community.

Chair Mahoney: Thank you.

Mr. Lee: Any questions?

Chair Mahoney: Thank you.

Mr. Dahilig: Art Brownstein, followed by James Winkler, followed by Steve Rogoff.

Dr. Art Brownstein: I'm Dr. Brownstein. I would like to wait until after Dr. Kimball's presentation, please.

Mr. Dahilig: James Winkler, followed by Steve Rogoff, followed by Kurt Last.

Chair Mahoney: Could you state your name for the record, please?

James Winkler: Hello everyone. I'm James Winkler. I'm the President and CEO of Hale Lea Medicine, Kaua'i Community Health Alliance. We are a 501(c)(3) nonprofit community clinic on the north shore. We have been serving the north shore for approximately twenty-five (25) years. We see approximately 15,000 patients a year; 15,000 visits a year, I should say. There is so much I could say, but it seems that the most important bit of misinformation is this urgent care versus emergency medicine issue. I really respect what Mr. Lee had to say about the ambulance needs. I recently spoke to Jen Chahanovich, who's the CEO at Wilcox. She told me that there are five (5) ambulances on the island with an average of fourteen (14) calls a day. Nine (9) trips that they make of those fourteen (14) calls that's a little less than two (2) trips a day on average. The notion that an urgent care clinic will decrease ambulance usage is simply not true. The reason people call ambulances is because they panic, they don't know what an emergency is, and they misuse emergency services. This happens in urban centers all over the Country. It's a

national problem. There are urban centers that are choke with urgent care clinics, and they have the same problem we do. I'm sure this happens in the daytime, too. People come in, and they call an ambulance, or they go to the fire station because they've...as Mr. Lee said, they had a sprained ankle or something that's minor. It's simply a patient education problem, and has never been shown to be solved by having more urgent care facilities. I want to point out also in my conversation with Jen Chahanovich at Wilcox, the CEO, that I asked her why does the urgent care center at Wilcox, their new Kaua'i urgent care center, close at 7:00 p.m.? She said because there's absolutely no demand after 7:00 p.m. in Līhu'e. Then I asked her...she was the CEO for twelve (12) years, I'm sorry, it's either Straub or Pali Momi in O'ahu. I said, are there any urgent care centers that are open twenty-four (24) hours in O'ahu? She said absolutely not a single one. Why are there no urgent care centers in O'ahu, in the entire state that are open twenty-four (24) hours? Because the definition of "urgent care" is non-emergency care. That's the definition.

Chair Mahoney: Could you wrap up your testimony?

Mr. Winkler: It's been very misleadingly presented to the public. They refer to it as an emergent care clinic. There's no such thing as emergent care.

Chair Mahoney: Could you wrap up your testimony?

Mr. Winkler: I will. Thank you.

Chair Mahoney: You used your three (3) minutes.

Mr. Winkler: Emergent care is just a conflation of the words "emergency" and "urgent care". It does not exist. This is an urgent care clinic. So they're seeking a residence above a non-emergency clinic so that they can deliver non-emergency care twenty-four (24) hours a day. Thank you.

Chair Mahoney: Thank you.

Mr. Winkler: Any questions that I can answer as someone who's lived, raised a family, and practiced medicine on the north shore for twenty-five (25) years? Okay, thank you very much.

Chair Mahoney: Thank you for your testimony.

Mr. Dahilig: Steve Rogoff, followed by Kurt Last, followed by Jeff Goodman. Steve Rogoff.

Chair Mahoney: Could you state your name for the record, please?

Steve Rogoff: Hello everybody. I'm Steve Rogoff. I'm a physician. I've lived in Kīlauea for fifteen (15) years and I've also worked as the Medical Director for Hale Lea Medicine, a nonprofit clinic. I also work as an E.R. Physician in Moloka'i for the last thirteen (13) years, so I have a sense of that. I think it's...everybody before me has spoken towards this difference between emergency room and urgent care; I won't speak towards that. I want to tell you three

(3) main reasons I think I'm concerned and am against the special granting of a permit that would allow a commercial to also have vacation rentals above it. As Dr. Pak said, I do feel like it's a little bit making an uneven playing field, such that the rest of us businesses that have difficult times paying for our employees. And in this unique financial situation, we would love to have housing for our employees, such that we would not have to pay them as much and offer them housing. But the three (3) main reasons I want to bring up about why we don't need another urgent care on the north shore, and also why it might really decrease the quality of care. One is we currently see every urgent care patient already. Our clinic sees ten (10) to twelve (12), lots of tourists, and I'm in a situation where I'd like to hire another physician. Another physician to live in the community, to be able to take care of the primary care needs of our aging population, our diabetics, our aunties with heart failure, our people suffering from a lot of psychological stress. If this is to happen, I'm not in a position where I can hire another physician that can be a part of the community. We are open ten (10) hours a day, Monday through Friday. We are open on Saturdays, and I'm trying to open on Sundays. As soon as I get this other physician, I can be open on Sundays. We don't provide x-ray services; that's true. We do provide lab services and everything else. We've taken Dr. Goodman twenty (20) years ago and recently have looked at getting x-ray services. It just doesn't make sense financially. That being said, I can practice medicine fine without x-rays. I also wanted to bring up, I think local physicians treat patients superiorly. We know the referral sources. We can call Dr. Funai on the phone or Dr. Desai, or the E.R. doc, or whatever we need to do. We know them, we know what services are available on Kaua'i. We know the local antibiotics and resistance patterns to antibiotics. We know the diseases of the reef. These are Utah physicians that are trained in emergency room medicine. The second thing I would want to say would be...the second main point, an urgent care center would divert patients away from the chronic care patients [sic] that take care of these patients. Like it or not, nobody goes to the doctor when they are feeling well; even though you need a colonoscopy, even though that bump on your skin should be looked at, right? You come when your knee hurts, and you come when you need an antibiotic; you come when you need something. That is my window. That is my window of opportunity; it's my touch point, as you will. When you come in for your little knee pain, that's when I can tell you we should really check your cholesterol. You know, your sugar was kind of high a year and a half ago.

Mr. Dahilig: Three (3) minutes, Mr. Chair.

Dr. Rogoff: Okay, so that's my second point. The third point, it would be...

Chair Mahoney: Wrap up your testimony, please.

Dr. Rogoff: Do I have one more point or am I done?

Chair Mahoney: If you could wrap it up very quickly.

Dr. Rogoff: Quickly. Urgent care is the low-hanging fruit, if you will. I can see three (3) urinary tract infections in the time it takes me to see one (1) patient with multiple medical problems. If you were to take away those three (3) easy visits that I can do in twenty (20) minutes and force me to see the one (1) difficult patient for thirty (30) or forty (40) minutes, I

guarantee you one (1) of the three (3) medical clinics, and perhaps two (2), will close if a significant portion of the urgent care money is taken. I think we should put our resources into the local physicians and creating an emergency room clinic. I don't think that we should break the rules for these guys. I think they can come and open an urgent care center, and we'd welcome the competition, but not under the auspices of this.

Chair Mahoney: Okay, could you wrap it up?

Dr. Rogoff: Thank you very much.

Chair Mahoney: Thank you.

Mr. Dahilig: Kurt Last, followed by Jeff Goodman, followed by Tiffany Spencer.

Chair Mahoney: Could you state your name for the record, please?

Kurt Last: My name is Kurt Last. I live in 'Aliomanu. Thank you for having this hearing. I'm here to support the north shore clinic. I've spent a lot of time with Dr. Kimball on this. First, this is not a place for trainees. I've seen the...by the way, I'm a former firefighter, rescue paramedic. I've spent time with Dr. Kimball looking at the CV's of the physicians that are going to be working at this facility. They are the leading trauma physicians in the Utah Health Science System. I mean, this is not a place to train physicians; this is a place to treat people. I think the thing that drew me to it was, first of all, having the very robust diagnostics that are planned to be in here, including imaging and a laboratory facility, which don't exist now. One of the reasons that I'm interested in it is that, first, we have a lot of guests that spend time on the north shore with us, and I'm getting older without grace. I'm going to be looking for...and our relatives are the same way and our friends. This is going to provide, I think, an unusual opportunity to not have to go to a hospital. I think as a resource it is...and I think if it's crafted correctly, and I believe Dr. Kimball and the others are willing to do that, it can be a resource for the rest of the physicians on the north shore, including things for radiology and laboratory services. I mean, this is going to be a resource that does not exist now and will be able to serve a growing and large visitor population on the north shore that is used to a different...to immediate, nearby, urgent medical care that does not exist down there. Questions?

Chair Mahoney: Questions? No.

Mr. Last: Thank you.

Chair Mahoney: Thank you very much.

Mr. Dahilig: Jeff Goodman, followed by Tiffany Spencer, followed by Makaala Kaaumoana.

Chair Mahoney: Could you state your name for the record, please?

Jeff Goodman: My name is Jeff Goodman and I also would like to wait to hear the applicant's statement before making my 3-minute talk. Is that allowable?

Mr. Dahilig: Under the rules, that is.

Chair Mahoney: Yes.

Mr. Goodman: Yes? Okay, thank you.

Mr. Dahilig: Tiffany Spencer followed by Makaala Kaaumoana.

Tiffany Spencer: Aloha. I'm Tiffany Spencer. We've heard a lot of testimony so far from doctors. I'm coming to you as a resident of the north shore, Princeville. A mother of three (3) children and also, for the last two (2) years, I've taken care of my mother-in-law who just passed away from ovarian cancer. While she was suffering and going through her chemotherapy, I can't tell you how many times we bring her home, she would collapse, and she was suffering from nausea and dehydration. It always occurred in the evening, and we would have to transport her to Wilcox where she could get the help that she needed. This didn't happen on one (1) occasion; it happened so many times. So when I first met Dr. Kimball and he told me what they were going to do, I thought, oh my gosh, what a blessing this is that we can have an urgent care facility to help people, you know, that for a lot of us that are taking care of our elderly parents that need help. When do emergencies ever occur in the middle of the day when we can call a doctor and say hey, I need your help? It happens, but there's also...it seems to be that there's a lot of help that we need in the evening, or that we need right now. As a mother of three (3) children, my boys got into accidents all the time. I remember one (1) instant where my son did a backflip into the neighbor's pool and cracked his head wide open. We actually had the Fire Department come, and Aukai was there. I don't know if Aukai remembers. Probably not. Do you remember? Okay. So they came and looked at it, and we're like holding the head together so blood was gushing everywhere, and Aukai's like, you know, we can't do anything. We're not going to take the ambulance, so I'm like what can we do? He's like well, he needs to get some stitches. I called the North Shore Medical Clinic and they couldn't see him. So I had a friend holding his head together, and I drove, you know, over the speed limit, to Wilcox where he could get his stitches. Just for me, as a resident and as a mother, I do see a need for it. I totally support the physicians here, obviously. Although our primary care physician has just recently switched and now we were switched to another physician, but it's not easy to get an appointment just like that. It's not. I do support our physicians, but I think...I welcome a facility like this because there is a need for it. And I appreciate what they're trying to do. Thank you.

Chair Mahoney: Thank you.

Mr. Dahilig: Makaala Kaaumoana.

Chair Mahoney: Could you state your name for the record, please?

Makaala Kaaumoana: Aloha. I am Makaala Kaaumoana. I appreciate this opportunity to speak before the presentation because I have a commitment on O'ahu, and I will be flying, so mahalo for this opportunity. I'll leave my written testimony with Staff. Aloha Commissioners, the Hanalei Watershed Hui is very pleased to take this opportunity to testify in strong support of the application by the Makana Urgent Care Clinic to construct an urgent care facility in Princeville.

This application reflects the implementation of a community concern and component of the Hanalei to Hā'ena disaster resilience plan. It is a result of a comprehensive feasibility study conducted by the USDA Rural Development. This clinic will provide critically needed urgent care on the north shore, avoiding the long travel to Līhu'e, and support much of the good rescue work done by our local first responders. Having this clinic in our community means more of us will receive critical care in time to avoid potential longer term complications. Utilizing nationwide communications/programs, primary care physicians will know exactly what treatment was provided for follow-up care. This application requests a variance to allow housing for the physicians who will provide these services. It is necessary that these doctors be in the building and available urgently. The principals of this nonprofit are pros in this field. They are top-level trauma docs who are committed to being community partners and contributors to the wellbeing of our residents and visitors. We welcome this service into our community and look forward to working together to make life on Kaua'i safer and healthier. I testify today as the Executive Director of the Hanalei Watershed Hui. Mahalo.

Chair Mahoney: Thank you.

Mr. Dahilig: Mr. Chair, that's all I have signed up to testify; other than those who have elected to testify when the applicant does come before the Commission. I also have written testimony beyond that has been transmitted to the Commission from Joel Guy, President of the Hanalei to Hā'ena Community Association, in support. I have an email from Roberta Griffith in support, an email from Coppen Colburn in support, an email from Tiffany Spencer testified in support, an email from Ruben Cervantes in support, an email from David R. Hill in support, an email from Liz Kukula in support, an email from Dave Kukula in support. That is also written testimony that is being received as part of the agency hearing this morning, Mr. Chair. The Department would recommend making a final call for any verbal testimony at this time.

Chair Mahoney: Would anybody else like to testify on this agenda matter?

Mr. Dahilig: Seeing none, Mr. Chair. Given the genre of testimony and given the nature of concerns brought up by the community, as well as the nature of elements that support, they tend to coalesce around basic items, and I do not suspect any new issues may arise as a consequence of further agency hearing at this time, so I would suggest and recommend that the Commission entertain a motion to close the agency hearing.

Chair Mahoney: Chair will entertain a motion.

Mr. Abrams: Move to close the agency hearing.

Mr. Keawe: Second.

Chair Mahoney: It's been moved and seconded. Any discussion on the matter? Hearing none. All in favor? (Unanimous voice vote) Opposed? (None) Motion carries 5:0. Hearing closed.

Continued Public Hearing (NONE)

Mr. Dahilig: Thank you, Mr. Chair. We'll continue with Item F.3., Continued Public Hearing. We have none.

New Public Hearing

Zoning Amendment ZA-2016-4: A bill for an ordinance amending Chapter 8, Kaua'i County Code 1987, as amended, to establish a process to permit and prohibit Homestays.

Mr. Dahilig: And Item F.4., New Public Hearing. Zoning Amendment ZA-2016-4. A bill for an ordinance amending Chapter 8, Kaua'i County Code 1987, as amended, to establish a process to permit and prohibit Homestays. There is a Director's Report pertaining to this matter. Mr. Chair, the Department would recommend opening the public hearing at this time.

Chair Mahoney: Are there any members from the public that would like to testify on this agenda item?

Mr. Dahilig: Mr. Chair, seeing none, the Department would recommend closing the public hearing on this particular matter.

Mr. Abrams: Move to close the public hearing.

Mr. Keawe: Second.

Chair Mahoney: It's been moved and seconded. Any discussion on the matter? Hearing none. All in favor? (Unanimous voice vote) Opposed? (None) Motion carries 5:0. Hearing closed.

UNFINISHED BUSINESS (for Action)

Letter (7/13/15) from Max Graham, Esq., confirming next status report for SMA(U)-2008-5, Use Permit U-2008-4 and Class IV Zoning Permit Z-IV-2008-6 in the matter of Charles Somers, as Trustee of the Charles Somers Living Trust dated November 12, 2002, and West Sunset 32 Phase 1 LLC is scheduled for September 22, 2015. [Deferred 9/22/15, deferred 10/27/15.]

Mr. Dahilig: Thank you, Mr. Chair. We are now on Item L.1. This is Unfinished Business for Action. This is a letter dated 7/13/15 from Max Graham, Esq., confirming the next status report for SMA(U)-2008-5, Use Permit U-2008-4, and Class IV Zoning Permit Z-IV-2008-6 in the matter of Charles Somers, as Trustee of the Charles Somers Living Trust dated November 12, 2002, and West Sunset 32 Phase 1 LLC.

Mr. Keawe left the meeting at 9:42 a.m.

Mr. Dahilig: The matter was scheduled for September 22, 2015, deferred 9/22/15, and deferred 10/27/15. Our person making the presentation on behalf of the Department is Jody and she'll take the presentation from here, Mr. Chair.

Chair Mahoney: Thank you.

Staff Planner Jody Galinato: Good morning, Mr. Chair and members of the Commission. Just briefly, since this has been up so many times before you, in summary, there are several issues that need to be resolved. One is the completion of the roadway and the applicant is working towards that with the multiple owners and with the Department of Public Works and Department of Fish and Wildlife. I just received the conservation plan yesterday. I haven't had a chance to review it, but that was one of the pending items to help the applicant justify the use of the caretaker's residence and the size of the conservation barn onsite that is the remaining amendment to this application. And then there is, in the interim of all this going on, they did put up an equipment storage structure and we do suggest the fine for the after-the-fact, but we also suggest them amending their document, putting that all in with the amendment for the caretaker's residence and the barn. We'd like to get this back on the agenda and get this resolved.

Chair Mahoney: Thank you. Is the representative for the applicant here?

Max Graham: Good morning, Chair Mahoney and Commission members. I am Max Graham. I represent the applicants in this matter, and with me is the applicants' representative, Paul Kyno. I have submitted a summary of proceedings to date in this matter and because...I'm not sure if any of the Commissioners were sitting on the original...certainly on the first application, and I'm not sure if anyone was sitting through all the hearings on the second application, so I'm going to do just a brief summary. The property in question...it's shown up on the board there. Its 160 acres in Kīlauea Valley. The Kīlauea Stream runs adjacent to and through portions of the property. On the north side of the property is the Kahili Quarry Road that runs from the Kīlauea Lighthouse Road down to the Fish and Wildlife lot, which is the site of the former rock quarry.

In the first application, the applicant requested the construction of a single-family residence in the pink area shown on the map there, so that's the makai area of the property. And because the property is in the Special Management Area and also in the Open District, special treatment scenic ecological resource use permits were required.

Mr. Keawe returned to the meeting at 9:44 a.m.

Mr. Graham: The first application was eventually approved, subject to a number of conditions of approval. One of the conditions of approval was that the applicant file annual reports. The original approval was in October of 2008. As represented by the applicant, the applicant granted a conservation easement over eighty (80) acres to the...it was then known as the Kaua'i Public Land Trust, and then voluntarily granted a second easement over sixty-nine (69) acres so that as a result, the only area that would be allowed for development within the property was the twelve (12) acres that's known as the building envelope, and again, it's shown in pink on the map.

The applicant then, eventually in 2013, filed a second application. The second application was for the construction of a conservation manager's house, it's like a caretaker house, and a conservation manager maintenance building to keep all the equipment necessary to care take the property. The Planning Commission asked the parties in 2014 to voluntarily defer further action

in this matter and waive timelines in order to prepare a conservation plan showing the conservation activities that would take place on the property, so that was done in January of 2014. The following month, the main house was completed and a certificate of occupancy issued, so the main house has been constructed.

On behalf of the applicants, I filed a sixth annual status report and did an update, which essentially is the seventh annual status report, reporting on the status of all items, and that's what we're here for today. Briefly, what the applicant has done is the...has granted the conservation easements to what is now known as the Hawaiian Island Land Trust. The Kaua'i Public Land Trust merged with that entity. So the Hawaiian Island Land Trust holds the conservation easements; that's been done. I have submitted, in my summary to you, the final as-built landscaping plan with some photographs showing the landscaping in place, so that was a condition of approval, and that's been done now. The conservation plan has been completed, was submitted to the Hawaiian Island Land Trust. We received their comments back. The conservation plan has been amended further, consistent with their comments, and so I think what we have today is the final conservation plan. And it proposes to do...well, three (3) things. One is create a nene enclosure area of approximately 3.75 acres, and that will be in the makai portion of the property below the...where the main house and building envelope site is. It will be enclosed with a predator-proof fence, and it will provide protection and habitat for the nene and other...actually, other endangered water birds in that area. In addition, there are approximately 16.2 acres of archaeological sites on the property, and we have submitted an archaeological inventory survey and a protection plan for those sites. Part of the conservation plan will be to preserve and protect those sites and do such cleaning up of those sites as may be necessary to protect them. And then finally, as part of the plan consistent with any work that's done in the nene enclosure or the archaeological areas, any removal of vegetation and replacement will be subject to the requirement that all new plants be indigenous or endemic. Unfortunately, most of that valley is foreign species; invasive introduced species. So to the extent we remove plants, if there's any new planting, it's going to be endemic, indigenous. The one issue that is a little bit open is the maintenance of the road. The applicant has been maintaining Kahili Quarry Road on an ongoing basis, but what we wanted to do is actually prepare and submit to the Department of Public Works engineering plans showing the nature of the maintenance areas where drainage improvements will be made. We're very close on that. I think that will be done within the next two (2) weeks, and we will actually have the plans in place. I believe we've completed all conditions of approval for Application No. 1, and with the submission of the engineering plans, we'll be prepared to have the Commission rule on the second application for the conservation manager's house and for the conservation maintenance building. One final item that I've been reporting on...the obligation to maintain Kahili Quarry Road was for the portion of Kahili Quarry Road that is a private road lot, both the County and the applicants have easements over that private road lot. That private road lot actually stops at the Fish and Wildlife lot at the makai end of the property I'm discussing. If you can recall, if you know the area, you have a private...a Fish and Wildlife lot that extends along the shoreline to the north and actually all of that property includes the lighthouse on the north side, so it's a large area of property. We have been asking and working with Fish and Wildlife Service to allow the applicant to come onto their property and repair that portion of the roadway because that's actually the worst portion of the roadway. The roadway is really usable and passable all the way down to the Fish and Wildlife lot. We finally had a meeting with them onsite yesterday. They've agreed to the improvements

and will be submitting a letter to us, asking us to prepare additional plans for the proposed improvements. The plan is to improve the road so that people can easily get down to the Kahili Rock Quarry site. The Fish and Wildlife service in the meantime, as you may know, has conducted an Environmental Assessment because they have their own conservation plan for the renovation of the refuge. As part of that plan, they intend to enter into an agreement with the community about the use of the rock quarry area, so they are working on that. We will just do the road and that will allow people to get access to that area, and then activities will be subject to whatever plans are worked out between the community and the Fish and Wildlife service. So that's the summary of the status to date. We believe we'll have the plans in within the next two (2) weeks, so as soon as we can reschedule the action hearing on this matter, we'd appreciate it. The next couple of meetings are February 23rd and March 8th, and I believe we will be prepared for a decision at that time.

Chair Mahoney: Are there any questions from the Commissioners to the applicant?

Mr. Keawe: I just had one question. Is the access road accessible now? Or has it been restricted?

Mr. Graham: The Kahili Quarry Road is physically accessible, and when you get down to the Fish and Wildlife lot, they allow people to go down there. It's just difficult because that portion of the road is all pot holes and rutted out, but they do allow people. If you get down there, you can go down to the river mouth.

Mr. Keawe: Thank you.

Chair Mahoney: Any further questions?

Mr. Dahilig: Mr. Chair, I do not have anybody signed up to testify on this item. I would suggest making a call for public testimony on this matter.

Chair Mahoney: Is there anyone that would care to testify? We have one (1) person who raised their hand to testify. At this point, could you take the podium and state your name for the record, please? (Inaudible) your testimony.

Ms. Cowden: Felicia Cowden for the record. This is another example of gentrification in my neighborhood. I live very close to this, and I have been attending the meetings at the Planning Commission since the start of this purchase and development, as well as the Kīlauea Neighborhood Association meetings. This is very hotly contended. There's a beautiful waterfall that's at the back of the valley that has been a big piece of this issue. When the community backed off a little bit, it was with the commitment of this team who was just speaking in this room...I guess we were told later that they didn't mean it, and they were able to take it back based on the lack of ability to get the liability insurance, but they've shut off the waterfalls, they don't communicate...shut off the access to the waterfall.

Administrator Furfaro left the meeting at 9:56 a.m.

Ms. Cowden: The road that goes down there along...the house was built almost right on the road, which was really surprising when there's so much room. Then, as they were doing it, they cut away the embankment on the road on the opposite side, then planted hau across what was the road, along that area, so they basically moved the road away from the house after they built the house. And then this place where they're putting a nene enclosure in it, at the Kīlauea Neighborhood Association meeting with these people in the room, the Fish and Wildlife said it is absurd to do a nene enclosure because the nene geese, they fly away, they don't have an enclosure, and they move around and it's not a reasonable way. It happens that that enclosure is on top of what was the public access for fishing, so they are blocking off the public access that the community is trying to preserve. The people really want back into the waterfall, and they want to not have everything blocked off. We've had this conservation protection plan come out by the Fish and Wildlife service, and they would really like to block our access to the beach on that final area and close it off when they close off the lighthouse, and only have it on and that... So what we're seeing here is just this constant crush of people being able to get down to the beach, to be able to get to the waterfall, and in this case...and I think a bad neighbor policy, they have planted bamboo along the upper edge of their property, so these long-time sugar worker families that live on the edge, they can no longer see the waterfall. They can no longer see the river, and they ask please, take that down. Kind of along the other area, a little bit further out towards the north on the water, they've done the same there, so they not only take the access, they take the view. The only time we can see it is like on an American Express commercial or a movie or whatever. This place...

Mr. Dahilig: Three (3) minutes, Mr. Chair.

Ms. Cowden: Okay, thank you. I don't feel they are being pono. I hope that you look closely at this.

Chair Mahoney: Thank you for your testimony. Is there anybody else to testify on this agenda item? Seeing none.

Mr. Dahilig: Mr. Chair, given the...again, just to recap, the deferral back in 2014 with waiver of time, because of the amendment, was requested by the Commission to complete the conservation plan.

Administrator Furfaro returned to the meeting at 9:58 a.m.

Mr. Dahilig: We are in receipt of that conservation plan that has been agreed to and given them meeting that request by the Commission at that time, the Department would recommend receiving the status report that was transmitted to us, as well as setting the matter for...not reconsideration, but taking up the matter of the amendment to the zoning permit and the SMA permit on the second meeting in February. So that would be our two (2) requests to the Commission is to, again, receive the status report, as well as retake up the matter that was requested to be deferred by the Planning Commission on the amendment to the permits on the second meeting in February.

Chair Mahoney: Could the applicant please sit down? Is there any further comment?

Mr. Graham: No further comments. The conservation plan makes clear that the nene enclosure will not be...will be setback at least twenty (20) feet from the County's pedestrian easement that runs along the boundary of the...this property and the Fish and Wildlife lot, and then runs along the...mauka along the Kīlauea Stream.

Chair Mahoney: Okay. Is there anything else? Any questions to the applicant from the Commissioners?

Administrator Furfaro left the meeting at 10:00 a.m.

Mr. Abrams: I have no problem receiving the status report. Are we going to...you said you just received this conservation plan?

Ms. Galinato: Yes. I just received the conservation plan. I don't have a problem with scheduling it for the second meeting in February for the amendment.

Mr. Dahilig: Just to reiterate, the conservation plan is not...

Ms. Galinato: It's not for us to approve.

Mr. Dahilig: Yes. It's not for the Commission to approve or the County to approve. It's between the Hawaiian Islands Land Trust and the...

Mr. Abrams: Yeah, yeah, I understand.

Ms. Galinato: It was more for justification for the applicant as to the caretaker needs and the amount of equipment necessary to justify the size of the barn that was proposed.

Mr. Abrams: I was just curious about seeing the other parts of some of the things that Felicia brought up in regards to where these areas are going to be proposed that would be, such as the nene enclosure and things like that I'd like to have a chance to see.

Ms. Galinato: I will provide you with a copy of that.

Mr. Abrams: If we can get it sooner than February because it's probably a big, fat document.

Ms. Galinato: I can do that.

Chair Mahoney: Okay, so at this juncture, Chair will entertain a motion.

Mr. Abrams: I make a motion to receive Director's Supplement No. 3 and the report to that. At that point, I wanted to have some discussion in regards to...with the Commission as to when we would schedule this. I understand that we can do that in February, but I just want to make sure that there's ample time for us to consider this particularly because we're new. I have to go back and sort of review all of this.

Mr. Keawe: Okay, so your motion does not specify when we will take this issue up again?

Mr. Abrams: Right.

Mr. Keawe: Okay. I second.

Chair Mahoney: It's been moved and seconded. Any further discussion on the matter?

Administrator Furfaro returned to the meeting at 10:02 a.m.

Chair Mahoney: Just for clarification, by not setting a date, is that...?

Mr. Abrams: Are we under a timeline?

Mr. Dahilig: I would say that I guess when we ran through the initial amendment, it actually went to a new agency hearing. At that point, there were two (2) intervenors that had come in, and those intervenors had actually dropped out. So we are treating the process as if it's a new application because of the amendment in terms of the timeline, so because of the fact that there was an agency hearing that was held. That agency hearing was subsequently...I guess the intervention subsequently dissolved by the withdrawal of those two (2) intervenors. The matter came back up to the Planning Commission for review at which time the Commission was concerned about any further discussion on the amendment to the permits based off of the lack of a conservation plan. They've waived timelines and have, in effect, said okay, we'll work on the conservation plan, and then at such time, now that they have submitted the conservation plan, the period between then and now, both with respect to action on the amendment, as well as any of the deadlines in the current running permit that they're obligated to meet, our considered toll at this point. So the delivery of the document and the receipt of the document today are considered...you know, we are now reactivating all of the timelines today. In terms of what exactly we have calculated, I don't know, but I suspect...and Mr. Graham can weigh in on this one...whether or not even pushing it to the March 8th meeting or the March 22nd meeting would be amenable to the applicant; that may be a question better answered by them. But I can't give you a calculation at this juncture.

Mr. Abrams: I'd like to hear...

Chair Mahoney: Is there any comment that you'd like to make?

Mr. Graham: When I submitted the updated report, I attached the draft conservation plan; that was last month, I believe. With my summary memorandum that I submitted for this hearing, I attached the final plan. The final plan incorporated comments from the Hawaiian Island Land Trust, so they're not major changes, but you do have the final plan if you'd like to review it. I don't have any objection if you want to put this off until March 8th; give everyone a little bit more time to read through things.

Mr. Dahilig: Just as an informational...so we do not have a meeting scheduled for the first meeting in February.

Mr. Abrams: Okay, so this final plan is the one that we got over the weekend?

Mr. Graham: Yes.

Mr. Abrams: Or on Friday?

Ms. Galinato: I just got it yesterday.

Mr. Abrams: Separate from the pack. You got it, when?

Ms. Galinato: Yesterday.

Mr. Dahilig: Yesterday.

Mr. Abrams: Yesterday.

Ms. Galinato: I got the update and the conservation plan. I haven't had a chance to go through it yet.

Mr. Abrams: Is it in your memorandum of support?

Mr. Graham: Yes, it's attached to it.

Mr. Abrams: And that's the same one as you got yesterday?

Ms. Galinato: I believe so. I got it...I got both of them, so I haven't...had a chance.

Mr. Abrams: Okay.

Mr. Graham: Yes, it is.

Mr. Abrams: Okay.

Ms. Galinato: A lot of paper.

Mr. Abrams: I would prefer March 8th.

Mr. Keawe: What was that?

Chair Mahoney: March 8th.

Mr. Abrams: Yeah, that gives me a little bit more time.

Chair Mahoney: Is that amendable to all concerned? Any Commissioners have any comments? So is there a motion?

Mr. Abrams: I make a motion to schedule disposition of this on March 8th.

Mr. Keawe: Secondary motion to what we have on the floor already.

Chair Mahoney: Yeah, we have a motion on the floor. Just the date...

Mr. Abrams: Receiving.

Chair Mahoney: To receive and to reschedule...discussion on the amendment...

Ms. Higuchi-Sayegusa: Action on the amendment.

Chair Mahoney: Action on the amendment. To receive the status report and take action on the amendment. The only thing on your motion would be the date...to clarify the date.

Mr. Abrams: Yes.

Chair Mahoney: March 8th. So the motion is...

Mr. Abrams: To receive the status report and schedule a hearing on that for March 8th.

Ms. Higuchi-Sayegusa: For the amendment.

Mr. Abrams: For the amendment.

Mr. Keawe: For the amendment?

Mr. Abrams: Yes.

Mr. Keawe: Okay. Second.

Chair Mahoney: Okay, so it's been moved and seconded. Any further discussion? Hearing none.

Mr. Katayama: Mr. Chair.

Chair Mahoney: Oh, excuse me.

Mr. Katayama: I think, you know, this thing...this permit has been a very long standing permit and, really, what we're being asked to do is act on a very specific portion of it. I think it would be very helpful for the Commissioners...and I guess correctly stated with Mr. Graham is that none of us were here during the initial permit application, and you know, sort of a convoluted path to this point, but precisely the focus on the maintenance manager's house and a...making permanent of a temporary structure that houses the equipment.

Mr. Dahilig: A barn.

Mr. Katayama: And I think what would be very helpful is how the conservation plan will be monitored and any assurances of compliance with the elements of that plan. And lastly is the Quarry Road. I think that has been a key element in the Kīlauea community, and you know, just assurance that how the private portion with the Federal portion and the community access to the Quarry will ultimately be maintained, and so everyone's clear on our actions as we move through the vetting of this application. I guess it's more from a historical perspective and the clarity on the impact of this applicant. Thank you.

Chair Mahoney: Thank you. Any further discussion? All in favor? (Unanimous voice vote) Opposed? (None) Motion carries 5:0.

Mr. Graham: Thank you very much.

NEW BUSINESS

Class IV Zoning Permit Z-IV-2016-11 and Use Permit U-2016-9 to construct and operate a medical clinic facility and four (4) residential units on a parcel located in Princeville, situated along the makai side of Kūhiō Highway and approx. 250 ft. east of its intersection with Hanalei Plantation Road, further identified as Tax Map Key 5-4-024:020 and affecting a portion of a parcel containing 19.204 acres = North Shore Urgent Care Clinic, LLC.

Mr. Dahilig: Thank you, Mr. Chair. We are now on action on Item F.2.a. This is Class IV Zoning Permit Z-IV-2016-11 and Use Permit U-2016-9. Again, this is the North Shore Urgent Care Clinic, LLC.

Before we get into the Director's presentation, I believe that the applicant did have some comment regarding the proceedings at this point.

Chair Mahoney: Is the representative for the applicant present? Could you state your name for the record, please?

Lorna Nishimitsu: For the record, Lorna Nishimitsu on behalf of North Shore Urgent Care Clinic, LLC. I don't know if you...we brought blown up plans of the site if you want us to put them up on the board, if you think it would be helpful.

Chair Mahoney: Yes.

Ms. Nishimitsu: Okay. Dr. Edward Kimball is one (1) of the members of the LLC. He has been an emergency medical and critical care physician from Utah who has traveled to Kaua'i for the past thirty-five (35) years. In particular, he has been to the north shore. During that time, he noticed the increasing number of residents and visitors that are residing in or visiting in the north shore area, and the growing need for an urgent care facility to serve the population. The need he felt was compounded by the distance from the north shore to emergency medical services in Līhu'e. Based on that, he had a vision about...well, his first vision was to provide emergency care for the people of the north shore. But the problem is that with the State Department of

Health licensing and the Certificate of Need, the insurance costs, the facility costs, he was...he had to refocus and look at an urgent care facility somewhat distinct from what is currently available on the island at this time. The first step he had was searching for a location ideally with already zoned entitlements and in an area that wouldn't be at risk during natural disasters, so he found this CPR unit that is part of the Princeville Center, immediately adjacent to the affordable housing facility that was allowed by this Commission through a Use Permit since it's zoned Commercial General. Dr. Kimball also contacted the USDA Community Facilities Program for funding, and worked with the Hawai'i Small Business Development Center to do a feasibility study for the proposed project, which identified about 15,000 persons within the service delivery area from Wainiha to Anahola and points in between. This study concluded that although primary care is certainly available in the service delivery area, urgent care in a robust sense is not available. By and large, Dr. Kimball has been meeting with the community associations and a majority of the people on the north shore support the clinic. There are exceptions, of course. There are some people who feel that the local physicians need their support and the physicians themselves do not support this urgent care clinic. I'd like to bring us all back to the fact that the property is zoned Commercial General. The clinic, as proposed, is outright permitted. So the issue of whether it's needed, whether it creates competition, whether Dr. Kimball is going after the low-hanging fruit, and therefore, taking some of the economic benefits that the other physicians could otherwise acquire are not land use issues that are properly before this Commission. There are distinctions between what Dr. Kimball proposes and what is presently available on the north shore; an x-ray machine, for example. Laboratory services for testing, the availability of professional staff on a 24/7 basis. There will be fixed clinic hours, but if we are allowed to have the medical staff residing onsite during non-business hours, non-fixed business hours, the staff is there for calls to immediately attend to patient needs. One of the witnesses testified about how...what might not be a true emergency, but to a parent or a daughter-in-law feels like an emergency. If you try calling your doctor, you are referred to a service...a call service center, and your only choice at that point is to drive into Wilcox Emergency. This will provide patients the option of seeing Dr. Kimball and his staff instead of taking that drive during the early morning or late night hours from Princeville, from Wainiha, from Hā'ena all the way into Wilcox. The fact that there are no urgent care clinics on O'ahu that have a 24/7 operation is probably based on the fact that staff does not live in. Therefore, the economics of it is not there. It shouldn't be economics that help you make your decision about whether or not this clinic has a right to build what the land is zoned for. We would ask that this Commission focus on land use issues, not on personalities, not on a fear that I will lose employees, I will lose patients, I will only get the fruit that's harder to pick, and make your decision based on sound practical zoning matters presently before you. Dr. Kimball is available...because I think we always are going to get sidetracked to the issue of whether there's a need or exactly what kind of services are you going to provide, and because of his experience as an emergency room physician, he would be happy to answer your questions. And yes, we are well aware that an ambulance cannot bring a patient to the clinic. We have an ambulance site only because if a patient walks in, as my son did to a clinic and the doctors determined that he had a pneumothorax, the doctors called the ambulance to transport my son to a hospital, so this is a facility that he's designed to factor in bringing the patients in and if an assessment is made that this patient needs to be transported by ambulance to a hospital, that patient will go by ambulance to the hospital. Thank you.

Dr. Edward Kimball: As has been mentioned...

Chair Mahoney: State your name for the record, please.

Dr. Kimball: I'm sorry. Dr. Edward Kimball.

Chair Mahoney: Thank you.

Dr. Kimball: As has been mentioned, before us we have a question regarding zoning and land use. In this public forum, there has been many questions and strong opinions brought forward about the need for this clinic, and I feel strongly compelled to answer some of the misinformation and misunderstanding because of those like Felicia and Alan, who are here, I believe, have had information that has just simply been twisted and turned into something that is not the case. So if I could just quickly clarify some things that if they have been misunderstood or misconstrued in the past, and part of that has been my lack of communication, I would like to clarify that if that's okay at this time.

Mr. Keawe left the meeting at 10:18 a.m.

Dr. Kimball: So in many ways, this is the culmination over two and a half (2 ½) years of gathering information and data about the medical needs on the north shore.

Ms. Higuchi-Sayegusa left the meeting at 10:19 a.m.

Dr. Kimball: Followed by careful analysis of that data, we have a simple question before us today as I mentioned. There are strong opinions in support of this clinic, and there are strong opinions opposed of this clinic. The supporters recognize the need for this facility and include three (3) major north shore community associations, the Mayor's Office, the County Fire Department, the former CEO of Wilcox Hospital, the Medical Director of Emergency Medicine at Wilcox, the Princeville Fire Chief, the General Manager of the largest north shore hotel, and significant numbers of north shore community residents. This proposal has further been supported by an exhaustive 8-month study on feasibility completed by the...and an independent study at that, completed by the SBDC, which confirmed the need and the financial feasibility of this proposal. I have carefully read and respect, maybe more than they know, the opinions of the opposition represented by this small, but very important, group of physicians who practice on the north shore.

Mr. Keawe returned to the meeting at 10:20 a.m.

Administrator Furfaro left the meeting at 10:20 a.m.

Dr. Kimball: I believe their opposition results in part from some misinformation and from concerns about possible business competition. We sincerely hope that the misunderstandings that we have had will be overcome, and that we will be able to work together in providing an increased level of medical care for the north shore residents. Having read their opinions, we would like to dispel several important misunderstandings. First, the perception that there is simply no need for additional urgent or emergency medical care on the north shore. In their

defense, much of their opinion may be based on the misconception that we are trying to build, in their words, a low-level or doc-in-the-box urgent care that might only care for simple medical issues. In other words, medical issues that could wait until the morning and be handled at the already existing primary care offices during office hours. This is just simply not our intention, and I would like to clarify that today. We intend to build a high-level facility with broad emergency medical capacity in order to meet many of the assessed needs on the north shore. A facility that will be capable of addressing a wide variety of urgencies and emergencies. We will staff this clinic...not with students, Felicia.

Ms. Cowden: Okay.

Dr. Kimball: With Board-certified emergency physicians, and equip this facility to be able to care for many true emergencies that can't wait until morning, and in many cases without access to stat laboratories and radiology, could not be managed well in a primary care office. Most importantly, we will work with Wilcox and have worked with Wilcox hospital and the head of their emergency department to establish mutually agreed upon protocols for the stabilization and early treatment of severe emergencies like heart attacks, stroke, and severe multi-trauma patients while awaiting ambulance transport, which is often delayed, as Mr. Lee mentioned, for long periods of time on the north shore. These patients will certainly present to our clinic as has been described. Many of the physicians in this room know that people present with symptoms of...for heart attack that may not be recognized as a heart attack, and with a physician's diagnostic skills are determined to be a heart attack, and at that very juncture, we would be calling 911 to transport these patients to definitive care. In the meantime, while these ambulances are en route, sometimes taking two (2) and three (3) hours because of multiple calls, we will have the capacity to stabilize these patients in the clinic. We will not divert ambulances already en route to definitive care, but we will be prepared for these emergency situations as they present prior to being transported. Our medical doctors and mid-levels are imminently trained to intubate airways, provide central venous access, and resuscitate unstable patients while waiting for this transportation. As we all know in these situations, minutes, and even seconds, count. And this level of emergency care is simply not available on the north shore today. Once the clinic is established, we will have an ever-increasing potential to save lives. This is the type of care our staff provides every day in Level I Trauma Centers, and we are very comfortable with these scenarios. So you may ask, given the capacity to do these things, these urgencies and emergencies, why not just become an emergency room, as Dr. Pak mentioned.

Ms. Higuchi-Sayegusa returned to the meeting at 10:22 a.m.

Dr. Kimball: That was our initial intent. It was going to be patterned after a freestanding E.R. that's on the Big Island, but as we met with stakeholders on Kaua'i, including Wilcox and the State Trauma Committee, they encouraged us to not create a freestanding E.R. at this time because of some of the problems that are occurring at Mahelona. There were discussions about being perceived as a full-blown E.R. with CT scans and surgical backup, and that not only the community, but the visiting community has that expectation. We conservatively took the approach of delineating our clinic as an urgent care, but a robust urgent care. Concerns were...The Mahelona E.R. was quite regularly, in fact, speaking to their physicians in the last two (2) days, approximately twice a week patients are transported to Mahelona, by ambulance,

and then are called back after several hours of recognizing that the patient's care exceeds their capability and are then taking another ambulance out of commission and transporting that patient to Wilcox. We want to avoid that scenario. They choose to call themselves an E.R. despite not having a CT scanner, not having surgical or cardiology backup. I am not critical of this. They are doing the best that they can, given the community circumstances there, and by calling themselves an E.R., they qualify for critical access, Federal monies that help support their long-term care facility that's so vital to the community in Kapa'a. But we will have the capacity and clinical capabilities very similar to Mahelona, including x-ray labs and ultrasound. We have carefully elected not to call ourselves an E.R. due to the issues described above. This is not to say that future progress will not take us to that level. At this point, we will begin with a robust and broadly capable urgent care center as described above. Our careful deliberations in making this decision should in no way be seen as an attempt to deceive or mislead anyone. These were long and carefully thought out discussions with stakeholders. Ambulance response and utilization is particularly fragile on the north shore. There has been the suggestion that this is simply a national problem.

Administrator Furfaro returned to the meeting at 10:26 a.m.

Dr. Kimball: But what is not explained by that is the fact that the north shore of Kaua'i uses 15% higher ambulance dispatch without transport than any other location on the island. Meaning that ambulances are called, the ambulance staff determines that this is not a transportable medical problem, and they leave without transporting the patient; 15% higher than anywhere else on the island. If this is an education problem, that means that the north shore residents are particularly or uniquely uneducated and we don't believe that's the case. Neither does the Fire Department, and they have testified accordingly. In summary and to be clear, we are building an urgent care that will approach the capability of an emergency room while avoiding the concerns mentioned above. This is precisely why we are seeking the multi-variance in zoning so as to allow for staff to be available for after-hours patients. To suggest that we would house them elsewhere defeats this purpose. Given the broad community support and the significant data identifying need for this clinic, it would be irresponsible for us to not proceed with bringing this important medical capability to the north shore. We look forward to working together, establishing the best medical practices available for the north shore community. I sincerely reach out to these physicians who I respect and understand their very important role as primary care givers on the north shore, and look forward to working with them and sharing our capability with labs and x-rays and anything else that we can work together on, and I extend my hand to them in that effort. Thank you.

Chair Mahoney: Thank you.

Dr. Kimball: I'd be glad to answer any questions.

Mr. Dahilig: Mr. Chair, I apologize for the reverse order here. We usually give the presentation first, but Jody had to cover a meeting for me in Honolulu, and needed to transition her out so she could catch her flight. So if you'd like, you can either go into questions now or I could go ahead and make the Department's presentation at this time. It's your discretion.

Chair Mahoney: At this time, could you do your presentation?

Mr. Dahilig: Okay, I can do the presentation on behalf of the Department.

Chair Mahoney: And we'll come back.

Mr. Dahilig: Okay. Just to reiterate, what has been transmitted to the Commission is a Director's Report that was received by the Commission on January 12th concerning this particular application. The trigger here is, again, the multi-family dwelling units that are proposed as part of the proposal, so that is a Use Permit element here. The use of the facility as an urgent care facility is outright permitted under our Code. It is the dwelling units that are in question from a discretionary approval standpoint and as the question before the Commission here. We are aware that the applicant has amended their application to move from what was originally four (4) dwelling units to two (2) dwelling units, so that change has been made in the application. As mentioned previously, it is also in the Commercial General area, hence the Use Permit for the residential units. At this time, given the Department's review, it is in an area already generally urbanized by development. It is adjacent to, most immediately, the affordable housing project that was recently constructed, as well as the Hanalei Fire Station; that is in the immediate vicinity. A little bit further away is the Princeville Shopping Center and Princeville Resort. The access is being proposed to be from Hanalei Plantation Road and Honu Road; not directly from the highway. There are other requirements concerning off-street parking. There are twenty-nine (29) spaces that would be required as part of the development. As part of our use evaluation, we did look at compatibility, whether or not it would be detrimental to the persons or properties in the area, and the use would not cause substantial environmental consequences, and is in general consistency with the Comprehensive Zoning Ordinance. We do look at mixed-use as a burgeoning planning tool for us to better integrate housing and commercial options. Given the recent adoptions by similar codes across the island, this type of development where you do have mixed-use is not foreign to the tools that we've been employing for better planning. In terms of lighting, they are aware that they cannot attract a nuisance by having lights shined up to the sky as to attract birds. Given our evaluation, generally...you do have the written report in front of you, Commissioners...we do find that a Use Permit is appropriate and could be issued, given the many compatibility elements that we've evaluated, so that is our evaluation at this time, Mr. Chair.

Chair Mahoney: Thank you.

Mr. Dahilig: And I believe there were two (2) individuals that had elected to want to testify after the presentation of the Department and the applicant that have not spoken yet. So I believe that is Art Brownstein, followed by Jeff Goodman.

Mr. Fayé: After Jeff, could I follow, please?

Chair Mahoney: We'll make a determination after these people testify, and everybody that...we'll make a determination after people that have signed up already, and then...that haven't testified and that have signed up, and then we'll address that. Thank you. Could you state your name for the record, please?

Dr. Brownstein: Good morning. I'm Dr. Arthur Brownstein. I've been a resident on the north shore of Kaua'i for thirty (30) years. I practice medicine primarily on the north shore, but also at Wilcox Hospital in the urgent care facility for six (6) years. There have been many hearings that we've attended on the north shore regarding this project. Initially, as Dr. Kimball related, it was sold to the communities as a freestanding emergency room, so the public was very much in favor. So all the community associations were very much in support of a freestanding emergency room, but when he did further research and found he could not get the necessary permits and the Certificate of Need, he downgraded it to an urgent care facility. He has since kind of mixed the words "emergency" and "urgent" together, calling it "emergent" in a lot of the meetings, and so there's a lot of...you know, the medical profession is very complicated and has its own terminology. My father was a physician for fifty (50) years, so I grew up with it, but the public has, as intelligent as it can be, has...medicine has its own idiosyncrasies, so the difference between "urgent" and "emergency" gets very, very confusing. So that was how it was sold, so the public's perception is this is going to be an emergency room; I can walk in with a heart attack, with a stroke, with a major head injury from an accident, and I can be treated here. But that's going to represent an unnecessary delay in transporting somebody to Wilcox Hospital. Wilcox Hospital Emergency Room...many of the cases that go there end up having to be transported by air ambulance to Straub and Queen's because they...those cases exceed the capacity of the treatment in the emergency room there. It potentially represents an unnecessary delay in the change of events. We do need better ambulance service on the north shore; that is very true. But as far as delivering urgent care, I don't really see the need to have a 24-hour residency...residential allotment with a zoning variance. Wilcox Hospital Emergency Room is open 24/7, and they don't require in-house residential structures for the staff...for the entire staff, so I don't see where it needs to be made in this case. I did supply written testimony. I'd like you to review it, please, before you vote on this project. And I thank you very much for taking the time to hear this very, kind of, confusing presentation because the medical jargon distinguishing between "emergency" and "urgent" has very highly technical considerations, and even to somebody with medical training, it can be confusing, so I thank you very much and I urge you to read...at least I hope you read everybody else's testimony, but at least mine. I'm Dr. Arthur Brownstein, and I practice on the north shore of Kaua'i. Thank you very much for your time.

Chair Mahoney: Okay, thank you for your testimony.

Mr. Dahilig: Jeff Goodman.

Mr. Goodman: Thank you for hearing me. My name is Jeff Goodman. I'm a medical physician and I have an active medical license, No. 2137, in the State of Hawai'i. I've been an active physician since 1972 on the north shore. I raised my family here. I've watched the conditions on the north shore change from time to time, and being a practicing physician, I had competition come in many times over the decades. I learned very quickly that competition is a good thing. I'm not opposed to competition. I'm not opposed to people being able to come in and set up their medical practices, and I'm never threatened by that because I always ended up looking pretty good compared to the competition that came to town. I think the...Dr. Kimball points out that there's a lot of misinformation out there. The bottom line is, is what you're doing here today is just simply a very simple situation of looking to see whether these two (2) units on the top of this medical clinic are going to be necessary for the functioning of the medical clinic. What the

other people have talked about regarding “urgent” versus “emergent”, over and over from Day 1, the community is really feeling that they’re getting an emergency room situation, so of course they are going to support that; I would support that. But the bottom line is, it’s not going to be, and it cannot be. It cannot be by law. There are laws that specify that if you are going to be a freestanding emergency room that you have to have a certification by the Joint Commission; that’s a very difficult process. Dr. Kimball also knows that his own certifying college, the American College of Emergency Room Physicians, discourages independent emergency rooms functioning without control or supervision by the general hospitals that are in the area. The American College also says that these emergency rooms should be open 24/7; that they should have an emergency room physician on staff at all times. Now, the other side of the coin is Dr. Kimball is saying that it’s not an emergency room, so I think the onus on you is to be able to make the determination; is this an emergency facility? Or is it an urgent care facility? Because if it’s an urgent care facility, it really does not need two (2) separate apartments that can provide space for a physician from some other area, and their families, on a rotating basis. I don’t think that serves the community well. I think people need to look at the competition, and look at what they have right now because many times, they don’t understand the patients themselves. The people in that community don’t understand that they’ve got really good, good care on the north shore already without the addition of this service. That’s my testimony. Any questions from you folks?

Chair Mahoney: Thank you for your testimony.

Mr. Dahilig: Mr. Chair, that’s all we have signed up to testify on this matter as elected to go on.

Mr. Fayé: Could I...

Chair Mahoney: Hold on, please.

Mr. Fayé: Mr. Chairman...

Chair Mahoney: Could you hold on, please? And then we’ll make a call.

Mr. Fayé: Will you allow me to testify?

Chair Mahoney: Well, if you wait a minute, then we’ll make a call on the next procedure, okay? Thank you.

Mr. Dahilig: Mr. Chair, it would probably be prudent to, maybe, check if anybody that has not testified, would still like to testify on this matter.

Chair Mahoney: Okay. Is anybody in the...here, present, not testified before and would like to testify on this agenda item? Seeing none.

Mr. Dahilig: It is apparent that an individual wants to testify a second time. I would suggest, though, that if that individual is allowed to testify a second time that everybody be given an

opportunity to testify for that second time; if that is the case. So I would...I guess that would just be my procedural suggestion on behalf of the Department.

Chair Mahoney: Seeing there's someone that really wants to testify, and I think in fairness, if this person testifies, others would be allowed to have a second...but we're going to limit it to three (3) minutes, so get your thoughts together, and keep the testimony to three (3) minutes. Could you state your name for the record, please?

Mr. Fayé: Thank you, sir. Yes, Alan Fayé. Second time. Having heard discussion by Dr. Kimball totally changes things for me. So my testimony, if I had heard him before, would not be what you have now. I would be 100% in favor of what he wants to do. See, I came in this morning not knowing what he was doing, and it sounds to me like the only difference between what he's going to have as an E.R. is that ambulance cannot deliver to the clinic. If that permission were...his clinic is going to have all the special ability to scan and x-ray and whatever, he says that, okay? So that means if somebody comes with a broken clavicle or something, he can tell the ambulance to come take him away, but ambulance can't pick him up and bring him to him; that's the only difference I see. He's going to provide all the capability we need, and as far as the rooms upstairs, that's a minor...a very minor issue. I think the fact that someone who would be able to be there 24/7, with or without family, would be a very valuable asset to this whole function, so what we need to do in the long-term is to change the rules about having ambulances being able to pick up somebody and bring them to this facility. So when that law changes, but in the meantime, we can work around it. I think this is a great idea.

Chair Mahoney: Thank you for your testimony. Somebody else? Next? Gentleman with his hand raised. Could you please, you know, make it relevant and don't...let's not rehash what we already rehashed and dissect everything all over again.

Mr. Winkler: I appreciate that.

Chair Mahoney: Okay. Could you state your name for the record, please?

Mr. Winkler: James Winkler. CEO and medical provider at Hale Lea Medicine in Kilauea on the north shore for the last twenty-five (25) years. I'm just...and I'm happy to have this conversation with Dr. Kimball later. We've sort of had this before, but this calling it a robust urgent care, rather than an urgent care and then that implication that they can have all these E.R. docs practicing emergency medicine seems like an incredible blurring of the lines since there will be no licensing to be an emergency room; for that, you need a Certificate of Need and all the other things that Dr. Goodman mentioned. We are concerned about a public safety issue because of this misperception. I would ask Dr. Kimball, when I speak to him, if a patient were to call his clinic at 2:00 in the morning with crushing chest pain, or tell him my wife can't move the left side of my body, or my husband is screaming he's in so much abdominal pain, would he tell those patients to call 911 and be transported to the E.R.? Or would he tell those patients, come into the clinic, we can handle it? I guarantee you the answer is...he would say, go to Wilcox. Because delaying treatment...the window of treatment for things like a ruptured appendix, coronary syndrome, stroke, they're very small. And so if somebody gets grandpa dressed, brings him to the clinic, rings the bell, wakes the physician up in his pajamas because they're having a

stroke, that's a life threatening situation. Second, and very briefly, there is no imaging services at this proposed facility. Meaningful imaging services include CT scan, and there will be no CT scan. It's a simple x-ray. Simple x-rays are...they're very minor when it comes to critical care. And lastly, the concept that there will be a physician there 24/7. Really? So he'll work eight (8) hours a day, twelve (12) hours a day, and then go up to his room and not leave for two (2) months? I don't even understand how there will be someone there 24/7. And his family is going to also be allowed to stay there? So the bottom line is, if you could show for this zoning change that there is a pressing community need for 24/7, if that's even possible, no CT scan, non-emergency care, where emergencies will be directed elsewhere, fine. We are all in favor of an emergency room on the north shore, sort of, but this is not that. And we're really afraid that people are going to show up there inappropriately, and then that could be a life-threatening situation.

Mr. Dahilig: Three (3) minutes, Mr. Chair.

Chair Mahoney: Your second three (3) minutes is up.

Mr. Winkler: Thank you.

Chair Mahoney: Thank you for your testimony. Doctor in the back, could you please state your name for the record, please? And once again, could we limit it...you know, not rehash (inaudible).

Dr. Pak: Yes. So my name is Dr. David Pak. I'm the practicing physician in Princeville. I really would like to talk to Dr. Kimball after this and actually pick his mind, but two (2) things I would like to ask him and ask the Board a couple things. One is, the north shore is a very, very fragile ecosystem when it comes to physicians. You can look at it on your records. There has been eight (8) primary care physicians that have been trying to practice on the north shore and they closed down; eight (8) of them. In fact, when I came on board, they kind of warned me like, you know, I'm just kind of warning you that you probably won't make it because there has been eight (8) attempts before of trying to have a clinic up there, and it didn't work. So I understand the north shore of the citizens and I want to make sure that the citizens of the north shore clearly understand that from our perspective as physicians, we want to give the best care possible. And saying a 24/7 emergency room kind of atmosphere, I don't think that would be a problem because that wouldn't be directly competing against us. But the question I have for Dr. Kimball, if he thinks that, then why can't he work with us on the north shore if he thinks he's going to not impede? Our bottom line is, why doesn't he open up the clinic from 7:00 p.m. to 7:00 a.m. when our clinics are closed? Supposedly that's the need, right? So I would like to work with him, if you're agreeable, to keep it open from 7:00 p.m. to 7:00 a.m., and that time, then we're all, you know, we are all going to be one family because everyone's going to have access. But he can't do that because he knows the numbers just like we do. He cannot do that. He has to disrupt the common urgent cares that come in and seeing patients or walk-ins that directly impact the north shore. I understand the people on the north shore. They want 24/7 care, I mean, who wouldn't want that 24/7 care, but at what cost? The bottom line is it will dramatically disrupt the care that's going to be available for primary care physicians on the north shore. That's it. Thank you so much.

Chair Mahoney: Thank you. Anyone else that hasn't...would like to testify? Could you state your name for the record, please?

Ms. Paterson: I will, thank you. It's Mary Paterson. I've been a resident of the north shore for almost thirty (30) years. I do understand, and I can hear and feel the frustration and the concerns of the doctors on the north shore, but after all, we are a big community and we are a growing community, and we have more and more accidents and urgent needs for physical care on the north shore than ever before. I'm just curious because if Dr. Pak is so worried, and if the doctors are so worried, he's really their main competition, but that's beside the point. What you're here for today is just to help the urgent care center, which is already permitted, allow them to have E.R. docs able to be in the vicinity to live upstairs so that they are able to do this 24-hour care. It is urgent care, and it is emergency care. They are qualified E.R. doctors, which none of our doctors, I don't believe, are. So by not allowing them to have this housing that allows them to offer the care, it's just going to hurt the whole community, I feel. And I think they are really going to benefit from a lot of the equipment and the services that the urgent care proposes to use. I really dearly hope that there can be a drawing close of the bridge, and a bridging of the gap because we will need to work together. We all live here and we all want to stay here. Thank you.

Chair Mahoney: Thank you for your testimony. You've already testified twice?

Mr. Dahilig: No, once.

Chair Mahoney: Once. Okay. Second time.

Dr. Brownstein: Thank you. I'm Dr. Brownstein. Mary, I love you. Alan, I love you.

Chair Mahoney: Could you just keep it relevant to items at hand? (Laughter in background) And let's move on, please.

Dr. Brownstein: You know, this is a perfect example of how the people I love and work with and have known for a long time have a misperception. What makes an emergency room a really valuable service to the community is that it's attached to a hospital like Wilcox Emergency Room; it's a wonderful place. I've sent many patients there and many lives have been saved. What makes it unique, as Dr. Winkler pointed out, is that it's not just x-rays and it's not just CT scans available and it's not just a very quick blood test that can be done to evaluate a patient's status, but it's also ultrasounds and the ability to call in specialists that are staffed on the hospital that are on-call to make very, very difficult decisions, life and death situations, that many times, as I mentioned before, require forward movement by air ambulance to O'ahu, which many patients end up. That cannot be done in a freestanding urgent care facility, and the public's perception that it can be delays the chain of events, which are very critical in these emergency...true emergency situations. So I just want to say that there's a huge public misperception of whether you are an emergency room doctor, but still practicing in an urgent care facility. It's not the same as being at Wilcox Emergency Room. Thank you very much.

Chair Mahoney: Thank you for your testimony. Okay, this is the final call. Testified...your second time, okay.

Dr. Goodman: Dr. Jeff Goodman for the second time. Thank you for this. I think there is something else that's going on that we are not thinking about, and that basically is what we've been trained to do when you have an emergency or you have an emergency. What do you do? You call 911, right? I mean, to add this "urgent care" on the north shore complicates matters because the first thing I hear out of the husband or the wife is oh no, I don't need the ambulance, I just need to go to see the doctor. I think this misdirects medical care. Many times a patient makes a fatal mistake by not calling 911. When they call 911 the ambulance is going to take them to the hospital; that's a (inaudible). They are not going to take them to this urgent care, and we've established that already. Another thing you should know, too, is that currently in front of the Legislature is Senate Bill No. 2132, which is to establish another ambulance on Kaua'i. It's not said exactly where it's going to be, but in talking with the ambulance manager yesterday, they are supposedly going to put that down in the Hanalei area. Also, House Bill No. 1874 is also asking for funds to subsidize another ambulance service, again, supposedly to be put in Hanalei. So with that in mind, to break our current pattern of teaching people to do the right thing by calling 911, there's going to, I think, be upset in the community sense of this. It's going to upset the applecart and it could be a fatal mistake. Thank you very much.

Chair Mahoney: Thank you for your testimony. Okay, this is...anybody else that hasn't testified their second time? Alright, seeing none.

Mr. Dahilig: Mr. Chair, we've been going about, I guess, two (2) hours at this juncture. If I could suggest, because we did, as part of the agenda, disclose the need to take the Homestay bill up at 11 o'clock, this may be a good juncture for a caption break, and then take the Homestay bill up after returning from the recess.

Chair Mahoney: Okay, we're going to take a caption break and take up the amendment...zoning amendment after the caption break.

The Commission recessed this portion of the meeting at 10:53 a.m.

The Commission reconvened this portion of the meeting at 11:07 a.m.

Chair Mahoney: We'll call the meeting back to order.

Zoning Amendment ZA-2016-4: A bill for an ordinance amending Chapter 8, Kaua'i County Code 1987, as amended, to establish a process to permit and prohibit Homestays.

Mr. Hull: Good morning, Chair and members of the Commission. We are now on agenda item M.1., which refers back to F.4., concerning Zoning Amendment ZA-2016-4: a bill for an ordinance amending Chapter 8 of the Kaua'i County Code 1987, as amended, to establish a process to permit and prohibit Homestays.

Ultimately, you folks are in receipt of the draft ordinance the Department submitted to you folks. A few months ago, just to give some background, this body reviewed, entertained, and ultimately

took action on a Department recommended draft ordinance for Homestays that recognized that Homestays are allowed outside of the VDA via the Use Permit process. It recommended that Homestays be allowed...outright permitted within the VDA, and concerning the Use Permit process to add additional regulatory standards that Homestays have to operate, as well as the renewal process. The Commission voted in favor of it, and it was transmitted to the County Council. Upon receipt by the County Council, there was a first reading and a public hearing held. Statements made by Councilmembers on the floor, as well as in discussions with Councilmembers, there appeared to be some intention to amend that draft ordinance to do away with the Use Permit process, and restrict Homestays solely to the VDA, that is the Visitor Destination Area. At that time, the County Attorney gave insight that such an amendment would constitute a substantive amendment, which would require the draft ordinance being sent back to the Planning Commission. So in response to that proposed amendment, the Department had no objections and in order to essentially save some time of having to introduce the amendment and then get it retransmitted back to the Planning Commission, the Department initiated the amendment on its own. So what you folks have before you is the draft ordinance that actually restricts Homestay operations solely to the Visitor Destination Area, and still maintains that renewal process for those in the VDA to adhere to the same regulatory standards concerning signage and operation oversight.

You also received, this morning, an addendum to the agenda that had a supplement to the Director's Report. That supplement is concerning the expenditure of funds collected during the renewal process. There has been a lot of discussion and insight and concern over enforcement of transient accommodations, both in and outside of the VDA, and so this amendment that we're proposing is to establish a fund, essentially, that the monies from the renewal process for Homestays is funneled into that is to be targeted solely for enforcement purposes for transient accommodations within the Planning Department.

We're available for questions.

Mr. Ho: I have a lot. (Laughter in background)

Chair Mahoney: Commissioner Ho.

Mr. Ho: This is going to...you're going to direct this that, now, Homestays will only be in the VDA area?

Mr. Hull: That's the recommendation of the Department, which was proposed in the draft bill that Homestays be only allowed in the VDA. It does align specifically with the TVR Ordinance, which states that TVRs, or Transient Vacation Rentals, are solely allowed in the VDA. So it aligns the two (2) together and in a sense, non-traditional transient accommodations, be it Homestay or be it TVR...and the difference being the Homestay, or Bed and Breakfast, is where the owner resides onsite, and the TVR is a single-family dwelling in which there is no homeowner onsite, but it essentially aligns the two (2) policies to state that they are allowed solely in the VDA.

Mr. Ho: What about those grandfathered?

Mr. Hull: For the Homestays that have received Use Permits outside of the VDA, and there has been a number of them, roughly twenty-five (25) to twenty-six (26), those are entitlements and stand as-is being that they were permitted as lawful operations prior to the adoption of this draft ordinance, should it be adopted.

Mr. Ho: You said that the fee collected you're going to direct it directly to enforcement only?

Mr. Hull: That's the proposal. Currently, renewal fees for TVRs, and as originally proposed for the Homestays, would just go directly into the General Fund; of course the County collects it, but it's going to the General Fund. We're proposing that for the Homestay operations, those renewal fees be specifically used for enforcement purposes.

Mr. Ho: Wouldn't it be better used if you just accept it as an administrative fund? You could then disperse it the way you wished.

Ms. Higuchi-Sayegusa: I can jump in. Fees collected have to be linked to administrative costs, but there has to be a link with the program itself. The reason for collecting the fee has to go towards administering the program or, in this case, there's a link with enforcement of...that the Homestay...whatever fees are paid are going to go towards enforcement of, you know, that they have the proper registration, that there's not illegal Homestay operations popping up outside of the VDA, etc., so that's that link. If it just goes into a General Fund or just to a fund that goes to operating the Planning Department as a whole, that's more like a tax, which is not...which may raise some legal concerns.

Mr. Ho: Last of my questions. If a neighbor has a problem with a bed and breakfast, I don't see how he can ask to have the permit revoked or any legal option that he would have to come against the bed and breakfast. Is there something in there?

Mr. Hull: When it was under the previous bill that allowed Homestays via the Use Permit process, the whole thing about Use Permits is that their sole purpose is to ensure compatibility with the surrounding neighborhood, and that's because, for the Use Permit, that type of use, in this case it would be Homestays, are a higher intensified use than is outright permitted in the respective zoning districts. So in a Residential Zoning District, a Homestay is a higher intensified use and the Use Permit needs to ensure compatibility. So there are manners in which if there are impacts being created after the permit is given that complaints can be forwarded to this body for the Planning Commission's review of that site to determine whether or not there should be revocation of the permit. Now that we're recommending that there not be a Use Permit process for those outside of the VDA, i.e. Residential or non-VDA sites, in the VDA, transient accommodations are generally permitted use. So a Homestay wouldn't be necessarily a higher intensified use; therefore, the Use Permit process isn't necessary and there's not that second check that this body provides when you remove the Use Permit process. There wouldn't be a means just to outright revoke the permit because a Homestay operation is occurring in the VDA, but there are other issues such as parking. The ordinance that we're recommending be adopted has parking standards; that there be one (1) parking stall, or off-street parking stall per room in operation within the Homestay. So if they are operating without the necessary parking, there are possible avenues; the Department can revoke the permit or require a downsizing of the

rooms. There's existing noise ordinance that is reviewed and enforced by the Department of Health, as well as other nuisance issues that arise that the Police Department enforces. So certain impacts that may be generated from the Homestay operation can be enforced in other ways, but specifically coming to this body for revocation, it indeed, Commissioner, would remove that possibility. But there are checks though, essentially, to ensure that they are compatible with the area.

Mr. Keawe: Just to...so those that are grandfathered, let's say, and they have to renew their permits, right?

Mr. Hull: They have to renew their permits...

Mr. Keawe: So they come for the renewal. There's nothing at that point that would allow Mr. Smith who lives across the street to complain about the wild parties that are going on?

Mr. Hull: No, for the grandfathered Use Permits, there is because...

Mr. Keawe: Is it still the same process (inaudible)?

Mr. Hull: It's still the same process.

Mr. Keawe: Okay, that's what I was concerned with.

Mr. Hull: So because it's a Use Permit that ensures the entitlement of a Homestay operation of that respective site, if there's complaints generated, they can be forwarded to this body for your review for the revocation of (inaudible).

Mr. Keawe: Okay, so that is still in there? That process?

Mr. Hull: Well that just stands as a matter of operation for Use Permits. Because the grandfathered...should this draft ordinance ultimately be adopted by the Council and signed by the Mayor, those that have secured Use Permits still hold those Use permits.

Mr. Keawe: Right.

Mr. Hull: And those Use Permits are solely actionable by this body. The Department cannot deny Use Permits; only this body can deny a Use Permit. So should there be complaints for those existing, they can come before this body for revocation purposes.

Mr. Keawe: (Inaudible)

Mr. Hull: Correct.

Mr. Ho: This permit now can just...someone can just come to the counter and ask for the permit over the counter and that's...it doesn't come before us?

Mr. Hull: For the VDA. For the Visitor Destination Area, correct.

Mr. Ho: Yeah, the one in the VDA.

Mr. Hull: And that's the manner in which transient vacation rentals operate within the VDA, as well as resort operations or hotel operations. But there are certain size...on a certain size property, say over an acre in size, then they are required to come before this body for your review. So the only time you'll see a Homestay operation is if they are proposing it on an acre in size or proposing a structure be constructed in conjunction with the operation. But aside from that, no, it is an over-the-counter departmental review.

Chair Mahoney: Further questions from any Commissioner?

Mr. Katayama: May I ask a question, please?

Chair Mahoney: Yes.

Mr. Katayama: Kaaina, what is the mechanism for properties...Homestays in the VDA that are not operating with a valid permit?

Mr. Hull: Currently?

Mr. Katayama: No.

Mr. Hull: If this passes?

Mr. Katayama: If this ordinance were adopted, and you know, probably the biggest cause would be somebody not renewing their permit on time. So what is that mechanism to remedy that situation? Or an instance where somebody has a Homestay without applying for a permit?

Mr. Hull: Under the draft ordinance, if it's adopted, they would simply come in for a Class I Zoning Permit, and a condition of approval of the Class I Zoning Permit would be the standards of operation embedded within the draft ordinance, which includes, but is not limited to, the renewal process.

Mr. Katayama: What is the incentive for a permit holder to renew on a timely basis?

Mr. Hull: At the end of the day, fines, quite frankly.

Administrator Furfaro left the meeting at 11:19 a.m.

Mr. Katayama: But that's not stated in the ordinance though.

Mr. Hull: That's under the Civil Fine section of Chapter 8 of the Kaua'i County Code. So the fining mechanism and enforcement mechanism is applicable to all zoning permits within Chapter 8, and so this would be one of those types of zoning permits they have to receive and they have

to meet those conditions of approval. In the event that they fail to renew, a zoning compliance notice is sent out to inform them that they have failed to renew. If they fail to meet that renewal within the compliance time allotted, then there is a fining mechanism that goes into place. If it goes above and beyond that where they refuse to recognize the fines, it can go as far as the Prosecuting Attorney's office. But as far as the renewal process taking place, there has been some concern over the past few years about the manner in which the TVR renewal process was being implemented or lack thereof. In the past year or two, we have implemented a fairly thorough, robust, and cyclical renewal process for the TVRs, and this would, essentially, get folded into it.

Mr. Katayama: Well, I think the intent here is that if you're going to put up new ordinances, you should provide a clear mechanism where people enjoying the activity have an incentive to comply with the ordinance, as opposed to an enforcement mechanism. And generally, I think, if you look at the fine structure in terms of values relative to what the Homestays are getting for their operations, it's sort of not that much of an incentive to do that. I mean, the fines are pretty modest if you compare it to their daily rates or weekly rates that they're enjoying.

Mr. Hull: Yeah, and the way that we envision rolling out the administration of this draft ordinance is that once the permit is pulled, you know, essentially putting the applicant on notice of the requirements of the permit, which include, but not limited to, the renewal process. And then concerning the fines, that's actually been an administrative issue, quite frankly, and we've gotten into the discussion with the County Council this past month. The fines can be relatively severe. They are up to \$10,000 a day. We have been, for the most part, administratively applying it per infraction; once the infraction is caught. We haven't been exercising so much on the administration per day that it's in operation in violation, which requires a bit more investigative work as our folks are...our guys have to, essentially, be out there on a day-to-day basis ensuring that...or finding out that they are operating each of those days that the infraction is being (inaudible).

Mr. Katayama: I guess what I'm saying is I don't want to create a bureaucracy where the Planning Department becomes so entangled with compliance. I would rather create a balance pathway with permit holders...it's like driver's license or motor vehicle renewals. I mean, it's sort of a fair way of people doing it on a timely basis. Yet, if it lapses, there is a mechanism where it's not that painful to renew it.

Mr. Hull: No, yeah, and that's what we envision, and that's the way the TVR program has kind of rolled out in the past year or two is that, for the most part, the renewal is...98% come in and do the renewal of their own volition. A handful that don't, you know, they might have forgotten, and a compliance notice goes out. We don't immediately start shocking the operator with a fine system. It's just if in the event that those operators ignore or choose not to participate, but for the most part it is...

Mr. Katayama: Is that process clearly understood in the Homestay ordinance? That that is part and parcel of that?

Mr. Hull: It's not in the draft ordinance just because the language is already within the CZO itself.

Mr. Katayama: So could there be a line that's added in the renewal process that any delinquent renewals will fall under this renewal process?

Mr. Hull: We can. A lot of times we don't necessarily recommend that language be restated in one (1) section of the ordinance if it's already in an existing applicable...

Mr. Katayama: Well not restating; just a reference.

Mr. Hull: We can reference it. I mean, legally it's not necessary, but...legislators often will reference and recite sections just to ensure clarity.

Mr. Katayama: I think that's what this is intended to do. And, again, to avoid surprises.

Chair Mahoney: Any other questions for the Deputy Director?

Mr. Abrams: Kaaaina, let me see. What we have is...and I am trying to understand...the recommended zoning amendment that we had sent up to the Council for Homestays, which did allow them outside of the VDA. Is that bill, which is being heard, I believe it is 2609, still a live bill at that point for the Council to consider?

Mr. Hull: It is still a live bill. It's the intention of the Planning Committee Chair to...he's essentially deferred action on the previously sent up bill in order to wait for this bill to make its way to Council, and have that discussion somewhat simultaneously.

Mr. Abrams: I see.

Administrator Furfaro returned to the meeting at 11:25 a.m.

Mr. Abrams: So, in effect, either position. And you are doing that to...the Planning Department is doing this to facilitate them being able to do that without going back because they are such different bills, I guess, at that point.

Mr. Hull: Correct.

Mr. Abrams: And so the idea of the proposal for Homestays that are only inside the VDA is that it comes with a standard now that the actual...anybody who can actually do a vacation rental within the VDA for single-family dwellings, they aren't required to go get a zoning permit, are they?

Mr. Hull: They are.

Mr. Abrams: They are?

Mr. Hull: Yes.

Mr. Abrams: A TVR with no Homestay?

Mr. Hull: Excuse me?

Mr. Abrams: A single-family house with no owner-occupant in it.

Mr. Hull: Oh, sorry. A single-family house without an occupant onsite would constitute a TVR.

Mr. Abrams: Okay. And so they need to get a zoning permit?

Mr. Hull: Technically, they need to get a zoning permit. The TVR Ordinance originally...when originally passed, required all the standards of operations, such as the signage, notification of the neighbors, and operation for both VDA and non-VDA TVRs. When it was amended secondly...the second time it was amended, the VDA portion of the regulations was essentially removed out. So those standards are not applicable, at least zoning-wise, on those within the VDA. It is the Department's position to say that perhaps it should be and we are entertaining drafting an ordinance to look at VDA TVR operations, but currently, the zoning code is silent on them now.

Mr. Abrams: Okay. Would all of those then, I guess at that point, which would be treated different than a Homestay, right?

Mr. Hull: Correct.

Mr. Abrams: Be grandfathered? I mean, because they had an outright permitted use, right, which was to do transient vacation rentals that were only in the VDA.

Mr. Hull: If they got a Class I Zoning Permit that is a discussion. Yeah.

Mr. Abrams: If they got a Class I Zoning Permit? So anybody who is not...has a single-family home right now, who is in the Visitor Destination Area that is not currently doing a transient vacation rental, is now required to go ahead and get a Class I Zoning Permit?

Mr. Hull: Technically, they've always been required to get a Class I Zoning Permit. I think a lot of the focus, of course, was so much on the non-VDA sites and the Ag sites, and there's, rightfully so, a lot of focus on that and not much discussion had for what's going on inside the VDA because there wasn't as much concern because after all, that's the Visitor Destination Area. We do anticipate that there's a fair amount of TVRs inside the VDA that don't have that required Class I Zoning Permit, but it's just a matter of coming into the Department and you know, the \$30 fee and applying for the Class I.

Mr. Abrams: And that Class I would have the same sort of criteria then that is going to be applying to Homestays? Is that what you guys are thinking about?

Mr. Hull: Administratively (inaudible), and that's the discussion we have to have with the County Attorneys is whether or not we can apply that because it's not within the Code currently.

Mr. Abrams: I'm trying to reconcile here what you have relative to what was sent up, and then what you're saying now is the Councilmembers expressed the interest in amending the draft bill to deal with just the VDA only?

Mr. Hull: Yes.

Mr. Abrams: And the Planning Department has no objections to either one of them at this point right now, and are proposing these particular conditions in Exhibit B, right? No, no, Exhibit A because Exhibit B is the existing one that we have sent up.

Mr. Hull: So really the only difference that was changed is the land use chart, which in...if look on Page 2 of Exhibit B, at the very top. The way that the land use chart works is the specific use is listed, which you have there, Homestay pursuant to Article 18 of this Chapter, and you have for R-1 to R-6, which is Residential Zoning District, a "U" for Use Permit. R-10 to R-20, you have another "U" for Use Permit in that Residential Zoning District. And then in the Neighborhood Commercial and General Commercial, it has...sorry, that existing "P" was (inaudible) left out, but in CN and CG was "P" for Permitted. And then the second listed use is Homestays located in the VDA, or Visitor Destination Area, which has "P" across the board all the way for Permitted. So the only thing that was really changed was the top...the first list, Homestay pursuant to Article 18 of this Chapter, all the respective check boxes are blank, and if a use is listed on the chart without a specific box filled in with "U" or "P", it's prohibited in that district. To clarify that, we've also stated under Section 8-18.1(b) on Page 2 of Exhibit A that Homestay operations are prohibited outside of the VDA. That's really the only change. Everything else remains the same as far as operation standards that they need to abide by and renew annually.

Mr. Abrams: Okay. And also I guess in the Section 1, where you have the purpose stated, that last sentence has been changed.

Mr. Hull: Correct. Yeah, sorry, the purpose, of course, was also slightly altered because it reflects a different outcome.

Mr. Abrams: It reflects an outcome to regulate it and now to regulate it and fix its geographical location.

Mr. Hull: Correct.

Mr. Abrams: And let's see. Which General Plan are we operating under? We still don't have the new General Plan adopted. In the old General Plan, basically had a procedure relative to dealing with the vacation rentals as they were.

Mr. Hull: Yeah, the Department acknowledges that under the existing 2000 General Plan, when it was adopted and still the existing language is that the County adopt standards and regulations

that allow for Homestay or B&B operations outside of the VDA; that is existing language within the General Plan, which was passed in 2000. The Department also acknowledges that since the TVR rise up and the passage of that legislation began back in 2005, as well as the explosion of the internet era because back in 2000, quite frankly, the internet was still catching on. With the ability for sites like Airbnb, VRBO to facilitate this shared economy in which now actual residential single-family dwellings are being used for transient accommodations, which really couldn't have been facilitated at this rate without the internet or without Airbnb that there has been an explosion, a proliferation of non-traditional transient accommodations outside of the VDA which are having an impact, and that impact needs to be recognized post-2000 General Plan. Now, we said in our original ordinance that they are permitted via a Use Permit and here are some additional standards that Homestays outside of the VDA should be required to function under, if they are going to function outside of the VDA. We're also saying in this that if you're going to now function from the premise that they should not be allowed outside the VDA wholly, then we can also support them...this is the manner in which it should be laid out, essentially.

Mr. Abrams: So your Evaluation No. 3, the ZA-2016-4, functions from the policy perspective that Homestays should not be allowed outside the VDA.

Mr. Hull: Correct.

Mr. Abrams: I'm not sure whether there is a policy that says that. It's yet to be determined, right?

Mr. Hull: That would be setting this policy.

Mr. Abrams: So this is a presumption then that that's what is...so I'm not sure whether or not relative to a policy being established before...I mean, changing from where it is somewhat trying to get it defined to now at that point. Unless, I guess, the policy, I guess, at that point is now the perspective that led the Planning Department to initially allow it outside of the VDA area and now into the VDA area...only into the VDA area.

Mr. Hull: Yeah, correct, and sorry for the confusion there, Commissioner. The report wasn't recognizing a specifically adopted policy, just in the philosophical presumptive stance that they should not be allowed outside the VDA, which...

Mr. Abrams: Okay. And you have on No. 5 where you go ahead and specify that over the past several years where like the internet has gotten more robust and things like that, that deal with that, that it might...would be better to go ahead and just leave it in the VDA only as a way to monitor relative to the other properties that are in the VDA that operate as transient vacation rentals, whether they be a condo or hotel, I mean, they are all technically that. I noticed that you had down here that you are requiring, under the proposed there, which is basically what we had sent up, No. E where it says "For those homestays located in the tsunami evacuation zone, renters must be informed that the homestay is located in the tsunami evacuation zone and of the corresponding evacuation procedures." So that deals only with Homestays, so what about every...all the other places that are doing transient and have the same type of uses, shall we say?

Is it the intention later on to make that...which is followed up by Section F that in all print and internet advertising that you shall including the zoning permit number, which is now...we do TVR numbers. Now we'd have a zoning permit that would be just for Homestays?

Mr. Hull: Correct.

Mr. Abrams: And that notice that the Homestay operation is located in the tsunami evacuation area where applicable. And that is...where is the applicable thing that people would refer to in order to make sure they know whether they are in it or not?

Mr. Hull: We have specific maps that depict the tsunami evacuation zone, so the respective application for it would have to recognize that.

Mr. Abrams: Would it...I mean, since you're going to have to do that anyway when the guests arrive, I'm just trying to think about the congestion that you have relative to the advertising in regards to including the tsunami evacuation zone as an actual statement in the ad, whether or not that might be complicating enough in trying to figure that out. I mean, I know I want to be able to tell them, and I know that has always been a problem where some of the visitors there, but certainly they could be coming out of condominiums that, in effect, don't have any other knowledge or maybe they don't...smaller ones, bigger ones, hotels that they're all on the same boat and, in effect, if you're going to do that to just Homestays, you might want to think about doing that because that's a pretty weighty statement, I guess.

Mr. Hull: Yeah. Thank you for that, Commissioner. In the sense that there are some regulations in here that we're proposing, in particular the tsunami evacuation zone issue, as well as the respective wastewater system be utilized for the site that are essentially additional regulations above and beyond what TVRs were required to have in their ordinance, and it's just our...the Department's recognition that these be added, should they also be added to TVRs, indeed they should, as well as... Resorts and hotels for the most part have, what we figured, a better handle on, in particular, say the evacuation routes and procedures. What we have been somewhat informed of as of recent is the issues concerning these non-traditional transient accommodations in light of a civil emergency. In fact, the Civil Defense Manager just had a meeting with several stakeholders concerning this issue in particular. I believe Airbnb put it on in response to the problems that transient vacation rentals have had in New York with this past storm, as well as Sandy, as well as the Paris attacks on what happens in the event of a civil emergency and how do they...how does a respective government and the website, as well as the actual operators ensure the safety of the transients.

Mr. Abrams: Okay, and I understand that. I'm just not sure in the advertising aspect of it that that type of thing would work. But getting back to...going to B where you talk about the Homestay operation being serviced by a septic system approved by the State Department of Health. Would that not also include...would a sewer system be okay?

Mr. Hull: Correct.

Mr. Abrams: So is it only...is this saying that this Homestay has to have service by a septic system? What if they are on sewer?

Mr. Hull: Yeah, that could be amended to reflect septic and sewer. I mean, administratively, we would accept sewer as well.

Mr. Abrams: Okay. Well, I was thinking maybe we would just...I guess we get back to the same thing as whether or not it's being approved by the Department of Health as the one that's the defining one that has to do it because...we just learned of one where they took a cesspool and washed it all out, and the septic system is still dumping it into the cesspool, right? Even though it's a little bit more less solids are in it, and that that's a perfectly acceptable situation for the Health Department, which I guess you qualify that as a septic system; I'm not sure.

Mr. Hull: At the end of the day, we just want to give Department of Health oversight in the review of these applications because much of these applications won't have an associated building permit that the Department of Health signs off, so it just ensures that Department of Health is folded in.

Mr. Abrams: Okay. On F, you may want to go ahead and add in, where it says notice of the Homestay operation is located in the tsunami evacuation, you might want to write "zone" after that.

Mr. Hull: Okay.

Mr. Abrams: Okay. I don't have any more questions in regards to that other than I think I understand more in regards to how they want to have two, and we'll just sort of wait and see how our elected leaders who determine policy are going to decide on that.

Chair Mahoney: Okay. Any other questions for the Deputy Director from members of the Commission?

Mr. Katayama: Are you going to restate Paragraph B on the 8-18.2(b)?

Mr. Hull: Yeah, we can draft up an amendment for that.

Mr. Katayama: I think you just need to clarify it with an "if" or, you know, "at a minimum". Because if you have something better, then that should be acceptable.

Mr. Abrams: With the Homestay where you have an owner-occupant actually in there, I thought previously that that was the preferred way to have a vacation rental because the owner could be there to explain these situations like where you would evacuate and things, and they are required to do that; as opposed to not being supervised to that extent there that would make it easier and that was what the County wanted to do.

Mr. Hull: Yes, Commissioner, and to clarify, I know this can seem a bit confusing, it is the Department's position still that Homestays have the potential for less impact in the surrounding

neighborhood because of the owner being onsite and being able to self-regulate the operations. Ultimately, the draft bill that the Council has right now, the Department has not changed its mind, or is not objecting to that draft ordinance. It's stating that functioning from a policy perspective that Homestays can be allowed outside the VDA, here are the additional regulatory mechanisms that should be imposed upon those operations. However, the Department does not have any objections to restricting the Homestay operations solely to the VDA contingent upon the fact that those same regulatory requirements be imposed on those operations as well.

Mr. Abrams: Yes.

Mr. Keawe: I had one question. Kaaina, are there any Homestay applications in process now that would be subject to this particular ordinance should it be moved forward and passed?

Mr. Hull: Any Homestay application that has been deemed complete and accepted by the Department is automatically vested under the existing system regardless...and should this pass, they are vested under the existing system. And in fact, as many of you are aware of or might recall, there are several Homestay applications currently in the Contested Case Hearing process.

Mr. Keawe: Right. Yeah, that was my point. So those that have already gone through the process of applying typically or basically have that golden ticket should they be approved.

Mr. Hull: Correct. Well, the ones that have gotten approval have, so to speak, the Willy Wonka golden ticket, but the Homestays that are still being reviewed or in Contested Case, no, should this, say, draft ordinance be adopted and they come out of Contested Case, the County cannot say gotcha, you're out of the system. We're still obligated, and this body is still obligated, to review and determine and take action on those applications.

Chair Mahoney: Any further questions from Commissioners?

Mr. Dahilig entered the meeting at 11:46 a.m.

Mr. Abrams: Do you want us to go ahead and move the enforcement portion that you want to add in after into this bill on a separate vote? And then do the rest of it? Or how (inaudible)?

Mr. Hull: The enforcement...if you folks are ready to take action today and a motion is ready to be made, the Exhibit C reflects all of the draft proposals, as well as the enforcement account. The only amendment that the Department would recommend at this time is that Section 8-18.2 Subsection (b) begin with the statement, "At a minimum, the residential structure used for the homestay operation shall be serviced by a septic system approved by the State Department of Health." And then Subsection (f) state that the "operation is located in the tsunami evacuation zone where applicable;"

Chair Mahoney: Just going to research some information. At this time, if there's any member from the public that would like to speak on this agenda item, please identify yourself. State your name for the record, please, and you have three (3) minutes.

Ms. Cowden: Felicia Cowden for the record. I just want to make a short statement. I appreciate the scrutiny and the care that is being taken to look at this. I have confidence that you all are doing a good job on it. Where I just want to zoom the lens back a little bit is just how different is a Homestay from a temporary vacation rental, at least as they are intended? So it is not fully the purview of this particular question to question what is happening at the Council-level. But I do want to say that Homestays are like a toe-hold to being able to hang on to the farm or to be able to hang on to the home. Very typically it is not somebody who wants to necessarily start renting out their spare bedroom as their kids get older. So when, if this passes this way, I hope that when you're looking at other things that influence farms, particularly those with diversified agriculture that create food for our community, which is not something easy to make money in, that there's compassion held on to it because I know that like when we're looking at how severe the fines are for somebody who maybe is breaking this rule, a lot of times the people will lose the farm if they don't break the rule, and that is a very difficult situation. And having just come from the Food Safety Modernization Act requirements, it's a convergence of things that take the people off the land. So again, where I'm really concerned about keeping residents here and keeping Kaua'i resilient and able to have a residential population, I'm saddened to see that this...and I did go to the Council meetings, so I am aware of the whole pathway that this goes on, but I do hope that this isn't what passes, and I do hope that farms are able to rent out their kids' spare bedroom, or something like that, to be able to hold onto the farm. So thank you for looking carefully where there aren't punitive pieces like the ad having to talk about the evacuation zone, things like that. It's almost punitive in nature. So I appreciate that. I appreciate the care and I'm still rah, rah, rah let's support our farms and I'm afraid that this doesn't do that. Thank you.

Chair Mahoney: Thank you. Anyone else testifying on this agenda item? Seeing none.

Mr. Hull: In addition to the previous two (2) amendments to the report and draft recommendation, the Department would also recommend that Subsection 8-18.3, concerning Renewal of Homestay Zoning Permits, be added a new Subsection (e), as in "echo", that states "Enforcement of this section shall be subject to Section 8-3.5 of the Kaua'i County Code 1987, as amended."

Chair Mahoney: Okay. Commission, Chair will entertain a motion if one is to be presented.

Mr. Abrams: I move that we accept Staff's report as amended for ZA-2016-4.

Mr. Keawe: Second.

Chair Mahoney: It's been moved and seconded. Any further discussion? Hearing none. All in favor? (Unanimous voice vote) Opposed? (None) Motion carries 5:0.

EXECUTIVE SESSION

Pursuant to Hawai'i Revised Statutes Sections 92-5(a)(2 and 4), the purpose of this executive session is to discuss matters pertaining to the evaluation of the Planning Director over

the past and current fiscal year and to discuss upcoming fiscal year goals. This session pertains to the Planning Director's evaluation where consideration of matters affecting privacy will be involved. Further, to consult with legal counsel regarding powers, duties, privileges and/or liabilities of the Planning Commission as it relates to the evaluation of the Planning Director.

Mr. Dahilig: Mr. Chair, as we are, I guess, coming up on the lunch hour, maybe it would be prudent at this juncture to go into Executive Session to discuss what's on the agenda, and immediately after the Executive Session... I've been informed that we probably should take up the Coco Palms matter immediately after lunch for some timing issues, and then circle back to the clinic application. That would be my suggestion, Mr. Chair.

Chair Mahoney: Okay, so we'll move into Executive Session.

Mr. Keawe: What time?

Mr. Dahilig: I guess back at 1:00 (p.m.), I guess.

Chair Mahoney: 1 o'clock.

Mr. Dahilig: Is that alright?

Chair Mahoney: That'll be alright, yeah. We'll move into Executive Session until 1 o'clock; return at 1 o'clock.

Mr. Keawe: So moved.

Mr. Abrams: Second.

Ms. Higuchi-Sayegusa: I'll read the agenda item. Pursuant to Hawai'i Revised Statutes Sections 92-5(a)(2 and 4), the purpose of this executive session is to discuss matters pertaining to the evaluation of the Planning Director over the past and current fiscal year and to discuss upcoming fiscal year goals. This session pertains to the Planning Director's evaluation where consideration of matters affecting privacy will be involved. Further, to consult with legal counsel regarding powers, duties, privileges, and/or liabilities of the Planning Commission as it relates to the evaluation of the Planning Director. I suggest that we receive a vote.

Chair Mahoney: Alright. Is there a motion on the floor to go into Executive Session?

Mr. Katayama: Move to move into Executive Session.

Chair Mahoney: It's been moved. Second?

Mr. Keawe: Second.

Chair Mahoney: Moved and seconded. All in favor? (Unanimous voice vote) Motion carries 5:0. Approved to go into Executive Session.

The Commission recessed this portion of the meeting at 11:55 a.m.
The Commission reconvened this portion of the meeting at 1:05 p.m.

Chair Mahoney: Call the meeting back to order.

GENERAL BUSINESS MATTERS

Status Report relating to Class IV Zoning Permit Z-IV-2015-8, Project Development Use Permit PDU-2015-7, Variance Permit V-2015-1 and Special Management Area Use Permit SMA(U)-2015-6 = *Coco Palms Hui, LLC*.

Mr. Dahilig: Thank you, Mr. Chair. If we could just out of order take Item I.1. This is relating to the status report relating to Class IV Zoning Permit Z-IV-2015-8, Project Development Use Permit PDU-2015-7, Variance Permit V-2015-1, and Special Management Area Use Permit SMA(U)-2015-6.

I thought it would be helpful for the Commission to receive a status update from the applicant concerning activities at the site as there are deadlines that are running, and this being a mid-point of one of the major deadlines, I thought it would be appropriate to ask the applicant to appear and provide the Commission a status on where the activities are.

Chair Mahoney: For Coco Palms, could a representative... Please state your name for the record.

Chad Waters: Good afternoon. Chad Waters, Coco Palms Hui, LLC.

Chair Mahoney: Thank you.

Mr. Waters: I've got a couple letters here. One is from our lender, Omega Capital Street, and the second one is a letter from Pacific Concrete Cutting and Coring regarding the demo that I would like to distribute.

Chair Mahoney: Is there any other report you want to give on the status?

Mr. Water: Yeah, I would just like to give you a status update of activity subsequent to the Commission action last year. The major item that was accomplished was the demolition permits with SHPD approval. All the demo permits were paid for and picked up sometime I think in October. At that time, we also paid the \$110,000 fee to the County, and that was really the trigger for our acquisition loan, which also includes the demolition funds. So that October date triggered the underwriting of the loan, which then, you know, this is a very complicated property, and that triggered another appraisal, which was then done where we were fighting the holidays with Thanksgiving and Christmas and New Year's. The second appraisal was completed, and as the letter states, we are in final stages of underwriting; should be weeks, not months. As I mentioned, that is the trigger for starting the demolition. So we've done everything that we can do to get that demolition going. We have a signed contract with Pacific

Concrete. We've got the vector control. We've got asbestos work planned. We are ready to go on our end, so hopefully we start that within weeks.

Chair Mahoney: Okay. Any Commissioners have any questions for the applicant?

Mr. Katayama: Mr. Chair.

Chair Mahoney: Yes, you have the floor.

Mr. Katayama: Hi. Thank you for your update. Based on your letters that we received today, and how does that affect your overall timeline for the project?

Mr. Waters: Well, obviously the...

Mr. Katayama: Could you update us on that, and what the...?

Mr. Waters: Yeah. The total timeline is about twenty (20) months from the time that we start the demo to the time that it's completed. As said, if we start within the next couple weeks, add twenty (20) months on to that, we should be opening October of...what's that make that? Yeah, October of '17 at this point.

Chair Mahoney: Any other questions?

Mr. Waters: So just in addition, we've engaged our architects, our engineers, all the consultants are on board; we're ready to go. Everything gets triggered when this loan closes and funds in the next couple weeks.

Mr. Abrams: I'm curious in regards to the employee housing that you had secured. Is that still in place? And when would you see getting that part...?

Mr. Waters: Yeah, everything on the employee housing side is executed on our end, and is with the Housing Department. We will need to come back. The parcel that we have is a 1.3-acre zoned Neighborhood Commercial. We'd have to come back through a rezoning process, so we'll start that simultaneously when the loan closes and we actually take title of the property in a few weeks.

Mr. Abrams: Okay. Thank you.

Chair Mahoney: Okay. Could I ask you a question, please? According to this, like on the financing, it says although your file is in final underwriting review, the loan appears to meet our underwriting guidelines and we anticipate your loan to move through underwriting in a timely fashion. We cannot state that your loan at this point has final approval. Can you clarify that a little better? Or...what does that mean? Is there financing available for this project? Or they're still looking at the loan? Or...?

Mr. Waters: No. We engaged this lender a number of months ago with certain conditions, and so until all those conditions are met...the major condition was the demolition permits, and then the second appraisal. There's just additional documents that almost on a daily basis they're sending us requests for additional tax returns. The other thing that just came up is because we hit year-end, now they want to see the year-end taxes, so our CPA has been working overtime lately to get the year-end taxes done. If we would have closed in December, we wouldn't have needed them, but once we get into January, now we need year-end taxes. So there's just a few additional items on our list that they need. We think we have everything in to them, but I'm sure you guys know how lenders are that until you check off every single box there, they're not going to give you that final approval until every box is checked.

Chair Mahoney: And as far as some of the deadlines that were imposed on the timeline, is there anything that's not going to be able to be met? Are there any specific ones that are...?

Mr. Waters: Well, the two (2) deadlines that we are working on is the demolition deadline and that's why we've engaged Pacific Concrete to start on that pretty much the day that the loan closes, so Julie from Pacific Concrete is here if you want to hear from her directly that they can complete the demo in a satisfactory timeframe. The second item that we have that we are working on is submittal of the rest of the building permits, and that's in process right now.

Mr. Abrams: Mr. Chair, I would like to hear from Julie on how they go about demolition. Is she here?

Chair Mahoney: Could you state your name for the record, please?

Julie Simonton: Julie Simonton with Pacific Concrete Cutting and Coring.

Chair Mahoney: Okay. Mr. Abrams (inaudible).

Mr. Abrams: So you got a big job ahead of you, and I'm interested in...it says you're ready to go ahead by February 1 if everything goes as scheduled, I guess at that point. And how are you going to go about doing that in regards to the demolition side?

Ms. Simonton: You know, we are simply waiting for our client to tell us they are ready to start. Once we get that notice to proceed, we need to file a 10-day notification with Department of Health, which is standard anytime you do any demolition. Given the large quantity of supplies that we need for this job, they are not available on the islands; they need to come from the mainland. So from the time that we say go, you know, we need to get all those things in order and then we can start doing stuff behind the scenes, and we can start with the demolition.

Mr. Ho: With that 10-day window, what does February 1st mean to you?

Ms. Simonton: I mean, we are the demolition contractor, so I'm just waiting on Coco Palms Hui to say...you know, the last date we received was that we thought we would be ready to start by February 1st. Maybe it's a couple weeks out from that, but we are just...we are just waiting.

Mr. Katayama: Excuse me. Where are you disposing of the material?

Ms. Simonton: The material is going to be disposed of at Kekaha Landfill. And I believe this was addressed in, again, some of the submittals that have already been made.

Mr. Ho: What will you...do you work just the 7:00 (a.m.) to 3:00 (p.m.) schedule, so in between time, that is when you are going to be hauling this material? Doing the work?

Ms. Simonton: Yes.

Chair Mahoney: So you have to wait for the go-ahead, and then prep material? You don't have the materials you need right now to do the job?

Ms. Simonton: We do have some materials on hand. Just a job of this scale, we don't have all the materials for, you know, for the entire project on hand at this time.

Chair Mahoney: What percentage of the materials do you have on hand to start this job? So if you've got a major project, you get the go-ahead, you got the green light, what do you need to get?

Ms. Simonton: There is quite a bit of asbestos in the buildings, so we need to get some specialized...it's really...we have the products on hand, but just the quantity that we need. Then they need to come from the mainland, so plastics, things of that nature; filters, suits, you know, protective equipment.

Chair Mahoney: You wouldn't have that stuff on hand already?

Ms. Simonton: No, we do. It's just...it's the...

Chair Mahoney: How much plastic suits do you need?

Ms. Simonton: For a job like this, quite a few. And it's typical in jobs, when you gear up for a big job, you know, you get your supplies once the project moves into the stage where it's ready to start. It's the mobilization period where you gather all that stuff up. Obviously, we can't buy supplies for a project until we have assurance that it's going to move forward because we can't absorb that cost.

Chair Mahoney: Alright. When the demolition gets the green light to go with...what's the timeframe on the completion of the demolition?

Ms. Simonton: It's about a month until we get started, and then the demolition...you know, we have talked about four (4) to six (6) months to complete the demolition.

Chair Mahoney: Four (4) to six (6) months.

Mr. Dahilig: So if you were to start on February 1st, you are looking at four (4) to six (6) months past February 1st?

Ms. Simonton: It would probably be about a month to get everything, you know, the DOH notification, get all that stuff worked out, so maybe it would be starting March 1st, and then four (4) to six (6) months from there.

Mr. Dahilig: So there is not the possibility you could complete the demolition before April 13th of this year?

Ms. Simonton: I mean, I think that's an extremely aggressive schedule that would have significant challenges associated with it.

Mr. Dahilig: And you would have to start by February 1st at least? At the minimum? And then I guess, as I'm hearing from, I guess, from your client at this juncture, there will not be a notice to proceed with the construction until the loan is (inaudible)?

Mr. Waters: Yes, that's correct. I mean, for two (2) reasons. One is that the lender controls the demo funds, and the second thing is that you couldn't, from a mechanic's lien standpoint in title insurance, you can't start work on a project before the loan funds. So the notice to proceed will be given when the...the day the loan funds.

Mr. Dahilig: Based on this letter, it says "underwriting in a timely fashion". How long do you think...or how long has the lender, given that this letter was dated yesterday, what is "underwriting in a timely fashion"? How are you budgeting for that timeline?

Mr. Waters: Well, I have at least two (2) conversations with them a day to see what's outstanding, so we're pushing to have underwriting done in the next couple days, and move on to closing within about two (2) weeks.

Chair Mahoney: You understand there's, you know, not only maybe from the Commission, but from the public, it's, you know, a lot was given, and with a lot given, much was expected on meeting deadlines. As everyone knows, this was a hard push to get this approved and reluctantly it was done by some and with the understanding that deadlines would be met. So far, it hasn't been a good show on your part. The financing doesn't seem like it's quite there yet, and it's all contingent. What's the positive part there? If conditions and deadlines are issued, you know, there's the expectation that they are going to be fulfilled. And then it's...we are going to wait some more, wait until we get the money, then we are going to wait to order the stuff that we need to start, you know, and a job that's this big, some of this stuff should be locked in already. I mean, most of it should be locked in as far as what's going to happen, you know? That's where I'm having some concerns on meeting some of these deadlines, and it's somebody else who we got to wait for...how long is this financing? Is it just a different...seeing it's in this letter, is it a different lender that you are talking to now than you were before? Or has the financing changed? Or...?

Mr. Waters: No, it's the same...

Chair Mahoney: Same one?

Mr. Waters: It's the same lender. It's just lenders have certain protocols, and until that demo permit was in hand, they would not start the underwriting process. So it makes reasonable sense that they started before we had all this additional time, but that is the way that they operate, so they didn't start until we provided that demo permit in mid-October.

Chair Mahoney: Okay.

Mr. Waters: So really, for three (3) months for a project of this complexity is really not, from a financing standpoint, has not been that long, and I can definitely understand the concerns with the delays, and we have the same concerns and we're pushing it as hard as we can and really doing everything that we can. We've cleared around the buildings, we've done the abatement plan, and we've done everything that we can do that doesn't actually constitute physical work on the property.

Chair Mahoney: Okay. Thank you. Any other questions?

Mr. Abrams: Just one (1) in regards to the screening. Are you going to need an extension? You do already, I guess, at this point. Calls for October 15th to screen the project.

Mr. Waters: There is an existing dust fence around the property.

Mr. Abrams: There is? Oh, okay.

Mr. Waters: It probably needs some maintenance and some...there's some issues with vegetation growing.

Mr. Abrams: Okay.

Mr. Waters: And we will get right on that.

Chair Mahoney: Any other questions?

Bradley Chiba: Good afternoon, members of the Commission. Bradley Chiba, Pacific Concrete Cutting and Coring. In regards to the April 16th or April 15th deadline that you just mentioned, that was the six (6) months out of the October...when the permits were first, I guess, granted or issued or something. We, Pacific Concrete, is just the subcontractor here. Everything is going through them. We cannot start, like Julie said, until they give us the go-ahead, so that's our delay. With all due respect to Mr. Waters, that's...we have no control over their financing or anything like that. The 6-month deadline, we are confident that we can finish that from the day we start once we receive all materials and all that, which we planned after the Department of Health notification and all that.

Chair Mahoney: Okay. You're the subcontractor? Who's listed as the General Contractor?

Mr. Waters: The General Contractor will not be hired until the building permits are in hand, but we have a contract directly with Pacific Concrete, and that...they are the General Contractor for the demolition; they are not subbing. But as they mentioned, we need to give...it's not their fault that this hasn't proceeded. As I said, we need to get the loan to close, the funds to be there, and then at that point, we give them the notice to proceed.

Chair Mahoney: Okay.

Mr. Ho: Your project is right in the middle of a big traffic snarl. If you are operating between 7:00 (a.m.) and 3:30 (p.m.), how do you merge the traffic with your equipment and your trucks? Will you have police control? Or some kind of...? No?

Ms. Simonton: We just work with the traffic. You know, everything takes a little longer. Just knowing the traffic, we budget for that, but the plan is just to work with things how they are.

Chair Mahoney: Any other questions? Okay. At this juncture, we are going to call for any public testimony, and we have a registered speaker.

Mr. Dahilig: Mr. Chair, I have Jennifer Lim.

Chair Mahoney: State your name for the record, please.

Jennifer Lim: Jennifer Lim. I'm representing, actually, the landowner of the Coco Palms property, so that's PR II Coco Palms, LLC. We don't have much to add after you heard from Mr. Waters and the contractors, but the property still is under contract for sale to Coco Palms Hui. When we were last before the Commission, I think it was in August, and that's when Mr. Waters and Mr. Greene were asking for an extension on a couple of the time conditions, we expected the transaction to close; meaning that my client would fully convey the property to Chad and Tyler shortly after the issuance of the demo permits, and that was our expectation. Now, the demo permits were issued in October and then, just like Chad reported, the lender wanted to see the demo permits, then they wanted a second appraisal. Just between mid-October and here we are mid-January, I think it's just been a lot of work on their part with the lender. It's a complicated transaction, and the holidays sort of interfered, so we are certainly supportive of the work that they are doing. It appears that they are hitting milestones, which is important to us because the property is still owned by PR II Coco Palms, and we really hope that we are going to be closing the transaction pretty much immediately upon them getting approval from the lender to complete the sale. And that's all I have to say.

Chair Mahoney: Are there any questions?

Mr. Katayama: So is the funding from the lender that Mr. Waters is going for...is it for the purchase of the property or to fund the construction?

Ms. Lim: I believe it's for both. I mean, the funding that we are waiting for is for the purchase of the property, but I believe that you are looking for both purchase and the construction financing.

Administrator Furfaro entered the meeting at 1:28 p.m.

Mr. Katayama: And I assume that your closing documents will be pretty quick?

Ms. Lim: Yes. Because remember, PR II Coco Palms has had this property for some time and has been under contract with Coco Palms Hui for some time, so the transaction documents shouldn't be...I'm not drafting them, but I don't think that those are going to be an issue to complete. It's really just making sure that the financing is in place.

Mr. Katayama: So the demolition work is proceeding under your approval?

Ms. Lim: Well, right now, the understanding is that the demolition work will happen once the property has closed. In other words, by the time that he starts with the demo work, PR II Coco Palms will be finished, right? We will have conveyed the property because as you heard Mr. Waters say, they are going to use part of the proceeds from the loan, both to acquire the property and then do the demo and construction work, so that is the plan and that is the expectation. I mean, as the landowner's representative, we want to know that the permit remains valid. The permit is extremely important to us as the landowner and I think it's possibly even more important for Coco Palms Hui because they really want to build the project. But we would, for any number of different reasons, prefer to have the transaction close and then they can begin their demo work.

Mr. Katayama: Okay, thank you.

Ms. Lim: Thank you.

Chair Mahoney: Any other questions for the speaker? So the transaction hasn't been completed yet, so they need to acquire the property and this all...and then they need to...not only to acquire the property, but to proceed with the construction and that's all contingent upon that?

Ms. Lim: Correct.

Chair Mahoney: Right now, it's...okay, thank you.

Ms. Lim: Obviously, Mr. Waters can talk much more intimately about the financing than I can.

Chair Mahoney: Thank you. I appreciate your testimony.

Ms. Lim: Thank you.

Chair Mahoney: Could the applicant return, please? Okay. So I have a question. Can you explain like this financial plan on how, you know, to acquire and get a loan...it seems like there's not much together as far as proceeding at all. You explain it in your terms what your plan is.

Mr. Waters: Well, from the entire time, the plan hasn't changed, and this is typical of any development project that until you have your project approval, all the money comes out of pocket, which we've done. We have spent over \$3 million out of our pocket to get currently where we are. Our expectation was that the...and this is the same lender that we've had on board for almost two (2) years now, and the condition has always been is the...first, the project approval, and then the demolition permit in hand and ready to go. I firmly believe that if it wasn't for the holidays, if we wouldn't have been mid-October, you know, as I said with Thanksgiving, and Christmas and New Year's, it would have been closed within about a 45-day timeframe. But because we did get pushed, as I said, it triggered the tax return requirements because now, you know, they require the last three (3) years tax returns, and now we pushed into 2016. So there were just issues relating to the holidays and then to it being year-end, and so the plan has not changed from the beginning. It's just a little bit extra delays due to the time of the year.

Chair Mahoney: Okay, thank you. Any other...?

Mr. Katayama: May I ask a question, please?

Chair Mahoney: Yes.

Mr. Katayama: Mr. Waters, from the loan proceeds, the remaining amount, after satisfying the acquisition, is it sufficient to cover the full extent of the construction?

Mr. Waters: Yes. The entire project funding happens at once. A lender does not want to come into a project and get halfway into the project, so it's not just as simple as you get the demo permits, they get the demo bid, and they say well, it's "x" number for the demo, and that's all that you need. They need to see the entire project. They need to see that it's going to get completed. So it's a little bit more complicated than just the demo side, so we've gone through that entire process. When this loan funds, it's for complete funding of the entire project over the next two (2) years through completion.

Mr. Abrams: Question.

Chair Mahoney: Louis.

Mr. Abrams: Chad, let me see if I understand. The process for the lender involvement to loan on the project is based on a pro forma to them prior to actually acquiring it? Or do...and you don't show in conjunction with spending up to three (3) million bucks, there's no review of any kind of financial at all?

Mr. Waters: Oh, no. They've reviewed everything in extreme detail.

Mr. Abrams: I know, but that was from October. I mean, this has started early in the year and trying to line up the financing, I suppose you would have to give them some sort of expectation that it is feasible.

Mr. Waters: That's correct. Yeah, we have...

Mr. Abrams: They don't ask for any financials at that time? They wait until you give them the go-ahead to proceed?

Mr. Waters: They do have certain financials at that point, but as I said, the underwriting really does not start...because they don't want to underwrite a loan not knowing when the approvals are going to happen. So if an approval...they know it's going to be two (2) months and they can underwrite it now, but they don't start, in this case it was six (6) months we received our demo permits, they don't want to underwrite the loan then have things change. And so they like to do things in certain order, which is get the permits, do the underwriting, and then they request the additional documents. So we've submitted everything. It's not a function of them not being happy with what they have, it's just a function of certain guidelines. For an example, our ALTA survey was then out of date. An ALTA survey is good for a year. We had to get a new ALTA survey. We had to deal with the environmental, which is then out of date. Certain delays then trigger other delays, so you just have to go through and get all your paperwork in. As I mentioned, the year-end triggered a requirement for the last three (3) years tax returns and the CPA had to complete those for us on thirteen (13) different entities, and they did that in the last two (2) weeks to get everything in. So yeah, we've been working on this diligently from the beginning, and we respond immediately. There's just a certain process that you have to go through.

Mr. Abrams: Okay, thank you.

Chair Mahoney: Any further questions?

Mr. Waters: We'd be happy to come back in a month with a video of the demo starting, and whatever else we can show you at the next meeting.

Mr. Abrams: That would be nice.

Chair Mahoney: It would be nice to have an update. We need to receive? Okay, is there any further discussion?

Mr. Dahilig: I guess, you know, Mr. Chair, if I may take (inaudible). I guess from a departmental enforcement standpoint, as we are charged with enforcement of the permits and whether or not they are going to be in compliance with these permits, I have grave reservations concerning whether or not they will meet Condition No. 17 relating to completing demolition within six (6) months of pulling the permits. It's been clear, based off of the information that has been given to us at this juncture that, that date will not be met. Therefore, given Chapter 12 of the Rules of Practice and Procedure of the Commission, I feel like it is my obligation to bring a petition before the Planning Commission to either revoke or modify the permits concerning this particular matter. I believe that is the most appropriate way to handle enforcement of this, and I will be filing a petition with the Planning Commission to hear...I guess, whether or not to issue an order to show cause at its February 23rd meeting. I believe that if there are indications that there is demolition proceeding at that juncture, as Mr. Waters has said, if a video is available that

they are moving forward at that point, I leave it up to the Commission to decide whether or not it is in the County's best interest to provide the necessary extensions to actually remediate the anticipated violations that will occur on the permit. But at this juncture, I feel in order to ensure that these permit conditions are complied with, I will be seeking a request from the Planning Commission at its February 23rd meeting to actually deliberate on whether or not to issue an order to show cause of whether or not to terminate or revoke or modify the permits for this particular project. That's just my comments, Mr. Chair.

Chair Mahoney: Thank you.

Mr. Waters: If I may make a comment, the only thing...and as I said, I appreciate your concern and I apologize for the delays. My only concern with starting on this process right now is the lender may say well, we would like to wait to fund until after the results of that hearing. So if I may, I'd like to humbly ask that we wait thirty (30) days to have that on record, and come back in thirty (30) days and start that process at that time. There are other things we could do to get the demo done within time. We could bring on additional staff for the Pacific Concrete, but as I said, I'd like to request that we wait thirty (30) days to start that action.

Mr. Dahilig: And just in response, Mr. Chair, as the process is initiated by me in my Director's hat, I will continue to insist on compliance with this particular permit, and I will be filing that petition with the Planning Commission.

Mr. Abrams: And that's roughly thirty (30) days.

Mr. Dahilig: That's roughly thirty (30) days from now anyway.

Mr. Abrams: We'll just receive this report and your statement, and in effect, see whether or not it starts or doesn't, yeah? I know I'd be really happy to hear that the finance...so would you, I would expect.

Mr. Waters: Absolutely.

Mr. Abrams: See the finances going to know that we got that big obstacle out of the way.

Mr. Waters: Yeah. The lender knows we have this deadline, and they are working as fast as they can at this point. I do sincerely hope that we will have demo started within the next thirty (30) days, and we can get this thing done.

Chair Mahoney: Let's hope so. So at this juncture...

Mr. Abrams: Move to receive.

Chair Mahoney: It's been moved to receive the status report. Chair will entertain a second.

Mr. Katayama: Second.

Chair Mahoney: Moved and seconded. Any further discussion? Hearing none. All in favor? (Unanimous voice vote) Motion carries 5:0. Thank you.

Mr. Waters: Thank you.

NEW BUSINESS (Continued)

Class IV Zoning Permit Z-IV-2016-11 and Use Permit U-2016-9 to construct and operate a medical clinic facility and four (4) residential units on a parcel located in Princeville, situated along the makai side of Kūhiō Highway and approx. 250 ft. east of its intersection with Hanalei Plantation Road, further identified as Tax Map Key 5-4-024:020 and affecting a portion of a parcel containing 19.204 acres = North Shore Urgent Care Clinic, LLC.

Chair Mahoney: Okay, next. Where are we? We have the...

Mr. Dahilig: Mr. Chair, we are back on the...

Chair Mahoney: North shore.

Mr. Dahilig: Yeah, the clinic matter.

Mr. Abrams: Urgent care.

Mr. Dahilig: The urgent care matter, and I believe we have concluded with the second round of public testimony. I believe, at this point, the Department or the applicant is available for any questions, or any further discussion with either ourselves or the applicant.

Chair Mahoney: Okay. Could we have a representative for the applicant please step forward? State your name for the record, please.

Dr. Kimball: Dr. Edward Kimball.

Ms. Nishimitsu: Lorna Nishimitsu, attorney for North Shore Urgent Care Clinic, LLC.

Chair Mahoney: Okay. Are there any questions by the members of the Commission to the applicant regarding any of the testimony or concerns brought up earlier?

Mr. Dahilig: I do want to, just for the record, clarify for the Commissioners. This application was routed to the Department of Health. Generally, we do receive the comments back from the Department of Health, Wastewater Division concerning the project, but with respect to Certificates of Need, Certificates of Need are solely within the jurisdiction of the Department of Health, and if there are, as the public had mentioned, concerns about blurred lines that may arise from this facility providing a service that it does not have a Certificate of Need for, that is within the Department of Health's jurisdiction to enforce and take appropriate action. So at this juncture, when we are looking at it from a use standpoint, the Certificate of Need is a separate

prerequisite for them to open the facility apart from the Zoning Permit that is currently on the table for your consideration.

Chair Mahoney: Okay. Any comments?

Mr. Abrams: I've got a question to the applicant.

Chair Mahoney: Okay.

Mr. Abrams: Lorna, originally there were four (4) dwelling units or apartments, and you...it was scaled down to two (2). Was that on your side? Or a requirement? Or...I mean, would you take four (4)?

Ms. Nishimitsu: It was on the applicant's side that it was scaled down.

Dr. Kimball: Yes. We initially, I think, just came up with four (4) thinking that would be enough to...if we scaled up to meet anticipated need. As we started looking at, you know, putting kitchens and everything into four (4) different units, it just got prohibitively expensive for a nonprofit organization, so we just scaled it down to two (2).

Mr. Abrams: I see. Thank you.

Mr. Keawe: I have a question. Can you tell me a little bit about how you are recruiting these doctors on the mainland to come? And what are the criteria, your criteria, for recruiting physicians for this particular facility?

Dr. Kimball: Good question. I work as an Associate Professor of surgery and trauma at the University of Utah Medical Center. We train emergency physicians for residency programs. All of these physicians are not only practicing in the Level I Trauma Centers in the area, but they are also adjunct professors that are educators. We didn't have a chance, earlier, to get into this, but we actually have a large outreach program, 5-point outreach program, where we will be training the firefighters, lifeguards for the County for free to increase their resuscitative capabilities and their licensing, as well as having rotating nursing students from Kaua'i Community College, also for free, and students from the north shore high schools who have interest in health care careers. They will be able to come and shadow us for free. In addition...I don't mean to go on, but in addition, scholarships for those students going forward out of our 501(c)(3). So we're going to provide that level of education. We've recruited twenty-five (25)...we may not need all twenty-five (25)...Board-certified emergency physicians that are all academically appointed professors at the University of Utah Medical School just to meet those various needs.

Mr. Keawe: What do you offer them when they come down? I mean, how long are they going to be staying in these apartments? They're bringing their families. There has got to be some kind of offer you make to them to come.

Dr. Kimball: It's interesting. You would think there is some bait to get them over here, other than the beautiful island here. We've worked together over the years. I trained many of these

physicians myself. They are honestly coming and being paid about half of what they would normally be paid to work in this clinic. They see 150 patients a day, typically. We'll probably see nineteen (19) patients a day here. So being able to come with their families, being able to have housing that's both onsite and a separate house to house all of the physicians and their families, and then be able to spend time as part of their stay here off service and be with their families is the only incentive they have.

Mr. Keawe: So these are semi-permanent positions for these physicians? And what's your typical...do you think they will stay six (6) months? A year? Couple months?

Dr. Kimball: Oh, no. Yeah, no, I will probably be staying in the range of months each year, but these physicians will be here at a minimum of two (2) weeks, up to a month at a time, and rotating.

Mr. Keawe: So those twenty-five (25) pool that you have will be rotating through every two (2) weeks to a month?

Dr. Kimball: Approximately. Just to note, we also have a fourth emergency physician here on island that will be part of that pool, including the Director of the Emergency Department at Wilcox who has been very involved.

Mr. Keawe: Okay.

Chair Mahoney: Any other questions?

Mr. Katayama: Chair Mahoney, I have a question. I'd also like to disclose that I am a member of the Wilcox Hospital Board, and I feel that I can make an unbiased decision on this application. How critical is the residential part of your clinic? Because that is really what is before the Commission and its action on your application.

Dr. Kimball: Another good question. As I mentioned, we spent about two and a half (2 ½) years asking, literally, every stakeholder, analyzing the patient population, analyzing where they get their care, talking with...I talked to lengths with Kathy Clark who sat across the table from me and said we were planning on doing this. You just simply beat us to the punch. They had actually met with the Kīlauea group and offered to use their facilities as an urgent care two and a half (2 ½) years ago, and that group rejected that offer. With that data and talking to these stakeholders, we made a commitment to the community that we will be available at some level twenty-four (24) hours a day. What that level will be, will be determined in detail at our first 6-month trial period. It could run the gamut from having someone once a night walk up and ring a doorbell, and the clinician that's on comes down, evaluates the patient, and we don't see anyone again until morning. It could be not unlike Mahelona where twelve (12) to fifteen (15) patients a night are being seen. In either one of those scenarios, to not be opened at night when, as was mentioned by several people, the statistics show that most urgent and emergency needs occur at night, we would be remiss and not fulfilling the mandate I think that we've received from the community to help meet that gap, the overnight gap. To have the clinicians housed somewhere

else in the case of an emergency, I think, would defeat the purpose of not being able to respond to those needs through the night.

Mr. Katayama: So the thought there was providing a residency in the facility, you would have a standby service on a demand basis?

Dr. Kimball: Running the gamut from standby all the way to being open all night, truly open. Depending on that 6-month window of assessment and what the need is. We will plan on meeting that need.

Mr. Katayama: Thank you.

Chair Mahoney: Any other questions?

Mr. Katayama: Well, the Planner is not here.

Mr. Dahilig: I'm your Planner.

Mr. Katayama: Oh, you're the Planner.

Mr. Dahilig: Well, I'm pinch hitting.

Mr. Katayama: Oh okay. Do we have the same quality of service?

Mr. Dahilig: I sure hope so. (Laughter in background) I practically live here at the office anyway.

Mr. Katayama: So do you have residency? (Laughter in background)

Mr. Dahilig: I'm in residence next door. (Laughter in background)

Mr. Katayama: In sort of standard land use, in this case, in the structure, once we approve this residence and the use changes, the ability for the next occupant to use it as a residence continues?

Mr. Dahilig: Yes, it does. So the entitlement here is to allow, essentially, a duplex on the property, and that's what that is.

Mr. Katayama: In this case, the nexus on the applicant is that this residence is the integral part of the economics of the operation?

Mr. Dahilig: I guess...although they made gestures that it is partially from an economic standpoint, I would also view it as integrated as part of the use. So when you look at the stand alone nature of the clinic versus the stand alone nature of the duplex, those separate and apart are distinct uses. However, there is an attempt to create the synergy there between those two (2) things. Maybe yes for an economic use, but also from a general overall use standpoint, so that's

where...I wouldn't say that the evaluation is strictly based on the economic need at this point. It is also based off of the level of service that they are trying to provide.

Mr. Katayama: But how do you differentiate this level of service from a gas station? Or a market? Or a fast food restaurant?

Mr. Dahilig: And that's where, I guess, we have struggled in the analysis with this application because it just doesn't fit with a lot of the other kind of use descriptions that we get from a Euclidean standpoint. Is it a duplex? Yes. Is it a clinic? Yes. Could it also be viewed as a vacation rental? Yes. So we've had to make, kind of, these analyses to try to fit it into something that does make sense. If we were to go down the other route, let's say. A vacation rental is actually flat out approved as a use. So even if you were to detach yourselves from an economic standpoint that even in and of itself, because this location is within the Visitor Destination Area, could be an alternative analysis here. But what we've seen from the application coming across the counter is that the intention is not to have this operate economically as vacation rental use, even though the economics of a vacation rental could be outright permissible based on its location within the VDA. Taking the application at face value, we see this as a residential use, but in the alternative, it could be viewed as a more of a transient residential-type of use as well. This was kind of a Euclidean interpretation call that we've had to make at this point in guiding the application to come through in this matter. I don't know if I really answered your question, but it just kind of explains the thought process behind why, you know, even if we were to go down the economic decision, if we were to separate out the uses, then the economics of having transient residential element...people coming in and out of the structure...is outright permitted by Code. In a bit, it's...I was about to use the word "Frankenstein", but I think that's not a good analogy. (Laughter in background)

Mr. Katayama: I guess the quality of planning advice is just...

Dr. Kimball: Just parenthetically, there are sleeping quarters, actually housing quarters, in Mahaleona's E.R., in Wilcox's E.R., and in KVMH's E.R. for the physicians. When things are not busy, they go into those quarters and sleep. It's similar.

Chair Mahoney: Okay. Any further...?

Mr. Katayama: One (1) more. There was a mention of a Certificate of Need. Has that been granted?

Dr. Kimball: So there was a point made of that as if it was a big hurdle. It is simply not a big hurdle. We met on at least six (6) occasions with the Department of Health, and...I'm blanking on the gentleman's name. And the Certificate of Need would have been something we could have easily obtained. His recommendation was that we...given that we are not asking to be a full-blown recognized emergency department, that there was no need, at this time, to get a Certificate of Need. It falls below their criteria for a Certificate of Need. The big hurdle to become a full-blown emergency department is the JACO qualifications, the Joint Accreditation Committee's very stringent evaluation. It also adds a facilities charge to every patient that comes in, which makes coming to the clinic jump from about an average of \$110 charge to a \$600

charge. So these were the kind of things that we decided didn't fit what we were trying to do with the community. Nonetheless, it doesn't hamper us in anyway. There's no legal restriction for us to provide every single thing that we would like to provide as far as resuscitation emergency care using our full skill set for patients on the north shore.

Chair Mahoney: Any other questions or comments from the Commissioners?

Mr. Katayama: This is for the Planner again.

Chair Mahoney: Yeah, that's fine.

Mr. Katayama: Are there any time deadlines associated with taking action on this permit?

Mr. Dahilig: I'll just double-check. Actually, yes, there is, technically, because... It is the 29th, January 29th, unless (inaudible) to waive timelines is granted. We do not have a meeting scheduled on February 9th, and so the next meeting that we do have scheduled, based off of permit load, is February 23rd. So we would need a, I guess, a waiver of time until the 23rd for action. But today is the deadline...is the last Commission meeting that we would have before.

Mr. Katayama: Thank you.

Chair Mahoney: Okay. Is the Commission ready to make any...?

Mr. Abrams: I'd like to hear the preliminary recommendation.

Mr. Dahilig: Yeah, sure. Starting with Page 7 of the report.

Mr. Dahilig read the Preliminary Recommendation section of the Director's Report for the record (on file with the Planning Department).

Mr. Dahilig: That is our recommendation with the recommended conditions, Commissioners.

Chair Mahoney: Okay. Applicant, do you understand the conditions?

Dr. Kimball: Yes, sir. We have reviewed them together and we will comply.

Chair Mahoney: Okay.

Mr. Katayama: I have sort of a question for the Planner again. A lot of the discussion and public testimony dealt with the economics and service level. To the extent that our focus is on use permitting, what is our...sort of our responsibility to look at something like this on a more holistic basis, as opposed to a very technical use basis? Do we have some kind of obligation to the community to vet this? I thought some of the testimonies were quite interesting, but again, it's hard to strike a balance.

Mr. Dahilig: Right.

Mr. Katayama: And I think this is a very critical service, you know. I sort of appreciate what the applicant is trying to do. But I'm still not clear...is the community better off or worse off long-term?

Dr. Kimball: I could just add, if you don't mind. During the break, we met with four (4) of the physicians for about a half an hour. We had a very good discussion. We cleared out a whole bunch of misunderstandings. We, as a group, committed to doing a number of things, including extending our services to their offices; x-ray and lab services at no charge, just the base fees for running those services. We also agreed to having their patients referred back to them whenever they come to us on an urgent basis that we would be referring them directly back to their own...and we just really had a good talk and cleared the air on a lot of things. Shook hands and planned to work together going forward. Just thought I would add that.

Mr. Katayama: I think for me that would be very helpful in my decision. Could we somehow formalize that?

Mr. Dahilig: Sure. Is there an objection to entertaining a potential condition that we would incorporate in our report that would encourage working with the community? It is timely to take a break, anyway, at this juncture from a captioning and recess standpoint, so it may give us some time to maybe memorialize something, Commissioner.

Mr. Katayama: I think what would be even more powerful is that if...whatever the group of physicians in the area were to sort of meet and coalesce and develop that condition, and if the applicant would defer to the next meeting. It doesn't seem like that complicated of a condition.

Dr. Kimball: I don't think it's complicated. I think there will always be devil in the details of something like that. I feel very confident that we could commit, right now, without having to defer to another meeting, a plan to list four (4) or five (5) points of agreement that we talked about here and how that would be something that we would commit back to.

Ms. Nishimitsu: I think my concern...and Commissioner Katayama noted that, you know, is this a land use issue? Or is this a socioeconomic issue? And worrying about the physicians is human, and whether they will make a go, but whether it's a land use matter over which you have the ability to regulate, I think that's kind of stretching it. Dr. Kimball would agree to a condition that so long as the clinic is in operation, he shall allow the north shore physicians use of his x-ray and laboratory services at cost only, and shall refer all patients seen on an urgent care basis back to the primary care providers of that patient, assuming that the patient has one. Because there might be some patients that come in that don't have any family doctor. I think the bottom line, as I pointed out earlier, is whether this is a regular clinic, an urgent care clinic, or an emergency room facility. It's a use that's allowed in the Commercial General District. So the objections and the concerns based on competition about whether my practice will continue shouldn't be really factored in in decision-making. You know, maybe we think there's too many lawyers on this island, and I think a lot of people think that. (Laughter in background) So should we prevent an attorney from setting up practice because the rest of us don't want the competition? It's the same thing with physicians, hair dressers, and mechanics. If you start getting into that analysis, then we go down a rather slippery slope. The focus for you are the two (2) apartment

dwelling units and appropriate use. In order for them to provide 24/7 coverage they want to provide and they have committed to provide, having someone onsite is necessary. Otherwise, they'll have to call the physician to leave his home, wherever it might be, to go to the clinic, and that is unnecessary delay. People who call in the middle of the night, thinking they are dying, are going to call 911; they are not going to call Dr. Goodman or Dr. Kimball. People who have slashed open their hand opening a can know they are probably not going to die from that, but they don't want to drive to Wilcox to get it stitched up. They can't go to their primary care physician because their office is closed. You know, let them have the option of going to an urgent care clinic. Every other doctor on this island has the same opportunity as Dr. Kimball has to come before this Commission and say we need to be onsite. We need a dwelling onsite where our clinic is, so we can provide 24/7 patient care. And they've chosen not to do so for whatever reason. This is why I ask that subject to amending the Director's recommendations by including a provision that Dr. Kimball's clinic, so long as it's in existence, allow the use on a cost basis and refer patients back to the primary care physicians, I think that is a fair condition.

Mr. Katayama: May I comment, please?

Chair Mahoney: Pardon me.

Mr. Katayama: May I comment?

Chair Mahoney: Yes.

Mr. Katayama: Yeah, I apologize if, you know, if my references were to subsidize or reduce competition. That wasn't my concern or you know, trying to understand. What I'm trying to understand is, how is the overall community better off and better served by this service? Because, you know, I think competition is good or having more is better, but in this case, is that...we have a situation where...you always have to sort of...I think part of the responsibility of this Commission is looking at, is the community better off or protected from any kind of action that we take? Because we are changing the nature and the composition of what's happening in that community. So again, it's not supporting a very selective group or not; that's not it. It's just that from the public testimony that we received earlier this morning, and there were quite a few, it wasn't just one, how is the community better served at the end of the day? So I think that is what I'm trying to understand. Again, if there is a mechanism in place that by the addition of the services of the new clinic, all the physicians in that area are better off. I mean, for me, it's a very straightforward easy decision. That's where I'm sort of wrestling with it in trying to understand in good conscience to make a decision on this application.

Chair Mahoney: Okay.

Mr. Katayama: (Inaudible)

Mr. Dahilig: Do you want me to...?

Mr. Abrams: Why don't we start with...I'm going to make a motion to approve it.

Mr. Katayama: No, I mean, don't you want to get the condition?

Mr. Abrams: And take a break so you can do the amendment.

Mr. Dahilig: Given the tenure that I'm hearing, a condition like that is something the Commission does want to entertain, so maybe what would be possible is, let me obtain that language from the applicant and potentially incorporate that into my report, and then I'll return back to the Commission at that point.

Mr. Abrams: Okay.

Chair Mahoney: We'll take a caption break.

The Commission recessed this portion of the meeting at 2:10 p.m.

The Commission reconvened this portion of the meeting at 2:23 p.m.

Chair Mahoney: Call the meeting back to order.

Mr. Dahilig: Mr. Chair, before we incorporate this into my report, I met with the applicant, and based on the Commission's feedback, we have a proposed additional condition that would be added as Condition No. 9 to the list of conditions. Let me read the permit condition for you. "Applicant shall allow other physicians with their primary practice located within the North Shore planning district, provided those physicians are not primarily employed by a hospital system or other large healthcare entity, access to applicant's x-ray and laboratory services located at the urgent care facility at cost. Further, applicant shall refer any patients back to their primary care providers in the event they have identified such a provider upon discharge at the urgent care facility." And you will note that as we've discussed further, there is that exclusion concerning, "provided those physicians are not primarily employed by a hospital system or other large healthcare entity". That is meant to discern between...so for instance, if a doctor is affiliated with a hospital that is not considered primarily employed. I think what we are looking for is those doctors that are not part of a large healthcare consortium or a hospital system to be assisted in this manner. That's why the phrase "primarily employed" is there as an emphasis versus just employed because we understand that many doctors do have affiliations with other hospitals as well.

Chair Mahoney: Okay, so...

Mr. Katayama: May I ask a question, Chair?

Chair Mahoney: Yes, you may.

Mr. Katayama: So for example, the clinic in Kīlauea Town, would they be able to avail of your services?

Dr. Kimball: Yes, sir. That would be the intent. Those physicians in particular would be benefit from this, and that's who we would be extending this to. While we were preparing over two (2)

years of data gathering, we were approached by several National urgent care chains that they may be trying to do the same thing we were going to do, and we wouldn't be invested in helping them if they were to move in and try to set up a shop. We would be willing to help and offer our help to the primary care physicians that work and live in the north shore district.

Chair Mahoney: Okay, the Chair...

Mr. Dahilig: So I guess, Mr. Chair, if there is no further feedback concerning this condition, the Department would orally amend its report to incorporate this language, and unless there's objections from the applicant, would present this as a recommendation for approval before the Commission.

Mr. Keawe: So this would be Condition No. 9?

Mr. Dahilig: Yes.

Chair Mahoney: Does the applicant have any objections?

Dr. Kimball: No, sir.

Chair Mahoney: Okay, hearing none. Chair will entertain a motion.

Mr. Abrams: Mr. Chair, I move to approve Class IV Zoning Permit Z-IV-2016-11 and Use Permit U-2016-9, North Shore Urgent Care Clinic, LLC.

Chair Mahoney: With amended...

Mr. Abrams: No, it's not amended. Staff is...

Chair Mahoney: Oh, it is a condition. Excuse me.

Mr. Abrams: With all nine (9) conditions.

Chair Mahoney: You are correct. I stand corrected.

Mr. Katayama: Second.

Chair Mahoney: It's moved and seconded. Any further discussion? Hearing none. All...

Mr. Katayama: Before the vote, again, I'll make my affiliation with Wilcox Hospital Board as part of the record.

Chair Mahoney: Okay, thank you. Any further discussion? Hearing none. All in favor? (Unanimous voice vote) Opposed? (None) Motion carries 5:0. Thank you.

Dr. Kimball: Thank you.

Ms. Nishimitsu: Thank you very much.

Dr. Kimball: Thank you very much.

ANNOUNCEMENTS

Topics for Future Meetings

The following scheduled Planning Commission meeting will be held at 9:00 a.m., or shortly thereafter at the Līhu'e Civic Center, Mo'ikeha Building, Meeting Room 2A-2B, 4444 Rice Street, Līhu'e, Kaua'i, Hawai'i 96766 on Tuesday, February 23, 2016.

Mr. Dahilig: Thank you, Mr. Chair. That concludes the items for action at today's meeting. We have passed out the batting order for the next few meetings. Again, with anticipation that I intend on submitting to the Commission a petition for an order to show cause on the February 23rd meeting concerning the Coco Palms application. I believe we've also...there may be a return on a Contested Case Hearing. I have to check, but there may be a return on a Contested Case Hearing matter.

Mr. Keawe: (Inaudible)

Mr. Dahilig: I believe its Black Pot. Yeah.

Mr. Abrams: And I think you got the tax key wrong for POP Acquisition. It says 5-2-4:078 for Po'ipū, Kaua'i. (Inaudible) the others.

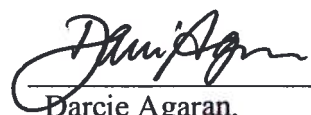
Mr. Dahilig: Okay. Yeah, that isn't correct. I'll have Dale double-check that. Okay? Otherwise, Mr. Chair, the following scheduled Planning Commission meeting will be held at 9:00 a.m. in this room on Tuesday, February 23, 2016.

Chair Mahoney: Any further business? Hearing none. Meeting adjourned.

ADJOURNMENT

Chair Mahoney adjourned the meeting at 2:28 p.m.

Respectfully submitted by:



Darcie Agaran,
Commission Support Clerk

() Approved as circulated (add date of meeting approval)

() Approved as amended. See minutes of _____ meeting.